

Constitution of:

Form-i-Baby Pty Ltd

ACN 632 475 542

A proprietary company limited by shares

(Company)

(adopted on 2nd November 2020)

1. Definitions and Interpretation

1.1 Definitions

In this constitution, any words and expressions defined in the Act and used in this constitution have the meanings given to them in the Act, unless expressly defined below:

Act	means the <i>Corporations Act 2001</i> (Cth) and includes any regulations and instruments made under the Act and any consolidations, amendments, re-enactments or replacements of any of them.
Actuator	The Actuator Operations Ltd (ACN 621 128 872).
Affiliate	means, in relation to a person (first-mentioned person): (a) a person or trust that Controls or is Controlled by the first-mentioned person; (b) a Related Body Corporate of the first-mentioned person; (c) in the case of the Investors includes: i. any fund, partnership or other vehicle managed, controlled by the Investor or a Related Body Corporate of the Investor; and ii. any other person who, directly or indirectly, Controls, is Controlled by, or is under common Control with the Investor, including, without limitation, any general partner, managing member, officer, director of the Investor or any venture capital fund Controlled by one or more general partners or managing members of, or shares the same management or advisory company with, the Investor; and (d) in the case of the Actuator means its founders and executives and Small Technologies Cluster Ltd as nominated by The Actuator Operations.
Alternate Director	means a person appointed as an alternate director of the Company under clause 5.17.
Approved Share Plan	has the meaning given in clause 12.49.
Artesian	means Artesian MedTech Pty Ltd (ACN 165 300 176) as general partner of Artesian MedTech VCMP, ILP, as general partner of Actuator Venture Capital Fund, ILP.

Asset Sale	means the sale, lease, transfer or other disposition of all or substantially all of the business and assets of the Company or Subsidiary or an exclusive licence of any material intellectual property rights of the Company or Subsidiary to one or more Unrelated Buyers as part of a single transaction.
Associate	has the same meaning as in Chapter 6 of the Corporations Act except that a party is not an Associate of another party merely because they are parties to this agreement or act in concert pursuant to this agreement.
ASX	means ASX Limited or Australian Securities Exchange, as appropriate.
Auditor	means a person appointed as an auditor of the Company under clause 11.1.
Bad Leaver	<p>means a person who ceases to be employed or engaged by, or otherwise involved with, the Company or an Associate of the Company, as a result of his or her:</p> <ul style="list-style-type: none"> (a) resignation or permanent departure from the Company or an Associate of the Company within three years from 17 September 2019 other than as a result of death or permanent incapacity, unlawful dismissal, grave ill-health or with the approval of the Board by Special Resolution and the approval of at least one Investor; (b) termination by the Company or an Associate of the Company with cause because he or she has committed: <ul style="list-style-type: none"> (i) fraud, dishonesty or wilful misconduct; (ii) an indictable criminal offence; (iii) a breach of a restrictive covenant which is not remedied within 20 Business Days after receiving written notice; or (iv) a material breach of his or her employment or consulting agreement which is not remedied within 20 Business Days after receiving written notice.
Board	means all or some of the Directors acting as a board.
Business	means the business carried on by the Company at the relevant time and from time to time.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Victoria.
Certificate	means, in relation to a share, the certificate issued by the Company recording the name of the Shareholder registered as owner of the share.
Chair	means the person elected under clause 7.5.
Change in Control Share Sale	means a sale, transfer or other disposition of Equity Securities to one or more persons as part of a single transaction that results in that person obtaining Control of the Company.
Competitor	means any individual, entity and / or its Affiliate who carries on, or in any manner or capacity is engaged, directly or indirectly, or otherwise has a

	concern or interest, in a business or activity that is the same or substantially similar to, or competes with, the Business or any material part of the Business.
Confidential Information	means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, including information relating to the Business, technology or other affairs of the Company, including all trade secrets, business plans, financial, marketing, systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of confidence, in each case, owned or used by or licensed to the Company.
Control	has the meaning given in section 50AA of the Act, and Controlled has a corresponding meaning.
CSF	means crowd-sourced funding within the meaning of the Act.
CSF Offer	means an offer of eligible Equity Securities that is made under the CSF Regime in Part 6D.3A of the Act.
CSF Regime	means the statutory regime for crowd-sourced funding in Pt 6D.3A of the Act regulating CSF Offers.
CSF Shareholder	means a Shareholder that holds one or more eligible Equity Securities in the Company as a result of: <ul style="list-style-type: none"> (a) being issued eligible Equity Securities under a CSF Offer; or (b) acquiring eligible Equity Securities that were originally issued under a CSF Offer.
Deemed Liquidation	means where the net proceeds of an Asset Sale are returned or paid to members of the Company, whether by payment of a dividend, a return of capital or share buyback (or any combination of them).
Director	means, in relation to the Company, a person appointed in accordance with this constitution.
Equity Securities	means Ordinary Shares, preference shares, any securities or instruments convertible into Ordinary Shares (including convertible notes and preference shares), any options to subscribe for any such Ordinary Shares or convertible securities or instruments and any other class of securities the Board designates as Equity Securities.
Excluded Information	means Confidential Information which: <ul style="list-style-type: none"> (a) is in or becomes part of the public domain otherwise than through breach of this constitution by a Shareholder or any other obligation of confidentiality on a party;

	<p>(b) a Shareholder can prove by contemporaneous written documentation was already known to it at the time of disclosure to it by another party (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or</p> <p>(c) a Member acquires from a source other than another party where such source is entitled to disclose it.</p>
Exit Event	<p>means:</p> <p>(a) a winding up of the Company;</p> <p>(b) a Change in Control Share Sale;</p> <p>(c) a Deemed Liquidation;</p> <p>(d) an IPO; or</p> <p>(e) any other return of capital by the Company to its members generally (other than a redemption or buy back or cancellation by the Company of any Shares in accordance with the terms of an Approved Share Plan)).</p>
Founder	Shannon Gilleland
Founder Entity	means a Founder (if Shares are held directly by the Founder) and/or an Affiliate of the Founder which holds Shares (if Shares of a Founder are held by a nominee).
Founder Director	means the person appointed by the Founder in accordance with clause 5.6(a).
Fully Diluted Basis	means assuming that all Equity Securities convertible into Ordinary Shares (including options over Ordinary Shares outstanding under any Approved Share Plan) on issue at the relevant time had converted in full into Ordinary Shares immediately prior to that time.
Good Leaver	means a person who ceases to be employed or engaged by, or otherwise involved with, the Company or an Associate of the Company and is not a Bad Leaver.
Government Agency	means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.
Insolvent	<p>A person is Insolvent if:</p> <p>(a) for a person other than an individual:</p> <p>(i) (insolvent) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Act);</p> <p>(ii) (liquidation) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;</p> <p>(iii) (creditors' arrangement) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved, in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Board;</p>

- (iv) (**insolvency action taken**) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of sub-paragraphs (i), (ii) or (iii) above;
 - (v) (**statutory demand**) it has or it is taken under section 459F(1) of the Act to have failed to comply with a statutory demand;
 - (vi) (**presumed insolvency**) it is the subject of an event described in section 459C(2)(b) or section 585 of the Act (or it makes a statement from which the Company reasonably deduces it is so subject);
 - (vii) (**unable to pay debts**) it is otherwise unable to pay its debts when they fall due; or
 - (viii) (**similar events**) something having a substantially similar effect to any of subparagraphs (i) to (vii) above happens in connection with that person under the law of any jurisdiction; and
- (b) for a person that is an individual:
- (i) (**bankruptcy notice**) the person has a bankruptcy notice issued against the person;
 - (ii) (**receiver appointed**) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) (**garnishee notice**) a garnishee notice is given concerning any money that the person is said to be owed;
 - (iv) (**creditors' arrangement**) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (v) (**creditors' moratorium**) the person proposes or effects a moratorium involving any of the person's creditors;
 - (vi) (**stops debt payment**) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
 - (vii) (**unable to pay debts**) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (viii) (**insolvent under administration**) the person becomes an "insolvent under administration" as defined in section 9 of the Act;
 - (ix) (**similar events**) something having a substantially similar effect to any of subparagraphs (i) - (viii) above happens in connection with that person under the law of any jurisdiction;

	(x) (death, imprisonment or incapability) the person is imprisoned, dies, suffers any total and permanent disability or becomes incapable of managing his or her own affairs.
Investors	means the Actuator and Artesian (and each is an “ Investor ”).
IPO	means the initial public offering and admission of any shares of the Company (or any IPO Vehicle) to the official list (where applicable) of ASX, or equivalent admission to trading to or permission to deal on any other stock exchange becoming effective.
IPO Vehicle	means any related body corporate of the Company or any special purpose vehicle established for the purpose of an initial public offering of all or a substantial part of the Company’s business.
Law	Includes: <ul style="list-style-type: none"> (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgement, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange, or requirement or approval (including any Government Agency); (b) any regulation, rule, by-law, ordinance, proclamation or judgement made under that law; and (c) that law as amended, consolidated, supplemented, re-enacted or replaced.
Managing Director	means a person appointed as the managing director of the Company under clause 5.15.
Officer	means a person who is a current or former Director, Secretary, executive officer of the Company or a related body corporate of the Company or a person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company.
Ordinary Resolution	means: <ul style="list-style-type: none"> (a) in the case of Directors, a resolution of the Board: <ul style="list-style-type: none"> (i) passed by Directors entitled to vote on the resolution and who alone or between them hold at least 50% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting). (ii) in writing and signed by all Directors entitled to vote on the resolution; (b) in the case of Shareholders, a resolution of the Shareholders: <ul style="list-style-type: none"> (i) passed by Shareholders entitled to vote and who alone or between them hold at least 50% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting); (ii) in writing and signed by all Shareholders entitled to vote on the resolution; (c) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:

	<p>(i) passed by Shareholders entitled to vote and who between them hold at least 50% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or</p> <p>(ii) in writing and signed by all Shareholders of that class entitled to vote on the resolution,</p> <p>and each such affirmative majority of Directors and Shareholders in clauses (a) to (c) above form and is referred to as a Simple Majority for the purposes of this constitution.</p>
Ordinary Shares	means an ordinary share in the capital of the Company having the rights set out in this constitution.
Purchaser	means a person who is to buy or acquire Equity Securities in accordance with the terms of this constitution under a sale or disposal to which clause 13 applies.
Register of Shareholders	means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Act.
Registered Office	means the registered office of the Company.
Respective Proportion	<p>means:</p> <p>(a) when used in relation to all Shareholders, the proportions which their respective holdings of Equity Securities bear to all of the issued Equity Securities calculated on the basis that all Equity Securities that are convertible into Ordinary Shares have been converted in full into Ordinary Shares; or</p> <p>(b) when used in relation to less than all the Shareholders, the proportions which their respective holdings of Equity Securities bear to the aggregate holdings of Equity Securities of those Shareholders calculated on the basis that all Equity Securities held by the relevant Shareholders that are convertible into Ordinary Shares have been converted in full into Ordinary Shares.</p>
Secretary	means a person appointed under clause 10.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a Secretary of the Company.
Security	means a security of the Company and includes the Shares, options, any convertible notes, warrants or other securities capable of conversion into Shares issued by the Company.
Security Interest	<p>(a) a 'security interest' as defined in the Personal Property Securities Act 2009 (Cth);</p> <p>(b) any third party rights or interests including a mortgage, lien, charge, pledge, assignment by way of security, security interest, encumbrance, title retention, preferential right or trust arrangement, claim, covenant,</p>

	<p>easement or any other security arrangement or any other arrangement having the same effect;</p> <p>(c) a right, interest or arrangement which has the effect of giving another person priority over creditors including any right of set-off;</p> <p>(d) a right that a person (other than the owner) has to remove something from land (known as a profit à pendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or</p> <p>(e) an agreement to create any of them or allow them to exist.</p>
Seller	means a person who is to sell or dispose of Equity Securities in accordance with the terms of this constitution under a sale or disposal to which clause 15 (Completion of Equity Security sales) applies.
Shareholder	means a person entered in the Register of Shareholders as a holder of Shares in the Company.
Share	means a share (of any class) in the capital of the Company and Shares has a corresponding meaning.
Simple Majority	See definition of "Ordinary Resolution".
Special Resolution	<p>means:</p> <p>(a) in the case of Directors, a resolution of the Board:</p> <p>(i) passed by Directors entitled to vote on the resolution and who between them hold at least 75% of the total voting rights of all Directors of the Company (whether or not present at the Board meeting) and which majority must include the affirmative vote of at least one of the Founder Directors if, and for so long as, any of the Founder Directors continues to hold such office at the relevant time; or</p> <p>(ii) in writing and signed by all Directors entitled to vote on the resolution;</p> <p>(b) in the case of Shareholders, a resolution of the Shareholders (other than a resolution of the kind referred in sub-paragraph (c) and (d) below:</p> <p>(i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting); or</p> <p>(ii) in writing and signed by Shareholders entitled to vote on the resolution;</p> <p>(c) in the case of the Shareholder decisions set out in Schedule 2 of this constitution, a resolution of the Shareholders:</p> <p>(i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in the Company (whether or not present at the Shareholder meeting); or</p> <p>(ii) in writing and signed by Shareholders entitle to vote on the resolution, including an affirmative vote of at least one of the Investors;</p> <p>(d) in the case of Shareholders in a class of Shares, a resolution of the Shareholders in that class:</p>

	(i) passed by Shareholders entitled to vote and who between them hold at least 75% of the total number of issued voting Shares in that class (whether or not present at the Shareholder meeting); or (ii) in writing and signed by all Shareholders in that class entitled to vote on the resolution, and each such affirmative majority of Directors and Shareholders in the form set out in sub-paragraph (a) – (c) above, and is referred to as a Special Majority for the purposes of this constitution.
Subsidiary	has the meaning set out in section 9 of the Act and Subsidiaries has a corresponding meaning.
Unrelated Buyer	means an actual or proposed (as the context requires) third party buyer of Equity Securities or assets of the Company who is neither a party to this constitution nor an Affiliate of any party but does not include an IPO Vehicle.
Unvested Shares	means any Shares that have not vested pursuant to clause 20.
Vested Shares	means any Shares that have vested pursuant to clause 20.

1.2 Interpretation

In this constitution, headings are inserted for convenience only and do not affect the interpretation of this constitution and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by '**includes**', '**including**', '**for example**', '**such as**' or similar expressions;
- (e) a reference to a document or instrument, including this agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a government agency or authority;
- (g) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day; and
- (h) a reference to an amount paid on a share includes an amount credited as paid on that share.

1.3 Constitution and the Act

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

2. Nature and powers of the Company

2.1 Proprietary company

The Company is a proprietary company limited by shares and accordingly:

- (a) the number of Shareholders of the Company is limited to no more than 50 (counting joint holders of a share in the Company as one person), but **not** counting any person who is:
 - i. an employee of the Company or of a Subsidiary of the Company who is a Shareholder;
 - ii. any person who was an employee of the Company or of a Subsidiary of the Company when that person became a Shareholder;
 - iii. a CSF Shareholder by reason of:
 - (A) being issued eligible Equity Securities under a CSF Offer; or
 - (B) acquiring eligible Equity Securities that were originally issued under a CSF Offer;or
 - iv. otherwise not required to be counted towards the 50 shareholder limit by reason of the Act; or
- (b) the Company must not engage in anything that would require disclosure to investors under Chapter 6D of the Act other than as authorised by the Act.

2.2 Powers of an individual

The Company has the legal capacity and powers of an individual both in and outside Australia.

2.3 Powers of a body corporate

The Company has all the powers of a body corporate including the power to:

- (a) issue and cancel Shares and Securities in the Company;
- (b) issue debentures;
- (c) grant options over unissued Shares in the Company;
- (d) distribute any of the Company's property among the Shareholders in kind or otherwise;
- (e) give Security by charging uncalled capital;
- (f) grant a Security Interest over the Company's property;
- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside this jurisdiction; and
- (h) do any thing that it is authorised to do by any other law (including a law of a foreign country).

2.4 Capacity not affected

The Company's legal capacity to act is not affected by the fact that the Company's interests are not, or would not be, served by acting.

3. Internal management of the Company

The internal management of the Company will be governed by this constitution.

4. Subsidiaries

Each Shareholder agrees, and must use all reasonable endeavours to ensure, that (except as otherwise agreed by Special Resolution of the Shareholders) the board and operation of each Subsidiary (if any) follows the board composition, decision-making, board operation, rules and management rules set out in this constitution, such that the terms of this constitution shall apply as if a reference to the Company were a reference to the relevant Subsidiary.

5. Directors

5.1 Number of Directors

- (a) The Company must have at least two Directors at all times and a majority of Directors must ordinarily reside in Australia.
- (b) The maximum number of directors is seven unless the Board resolves otherwise by Special Resolution.

5.2 Initial Directors

The initial Directors are as follows:

- (a) Shannon Gilleland as the Founder Director;
- (b) Matthew Hoskin as an additional Director; and
- (c) Nairy Baghdikian as an additional Director.

5.3 Eligibility for appointment as Director

- (a) To be eligible to be elected or appointed as a Director a person must:
 - i. be an individual;
 - ii. be at least 18 years old; and
 - iii. not be otherwise ineligible or disqualified from holding office under this constitution or the Act.
- (b) Subject to clauses 5.2 and 5.3(c), a person is not required to hold any shares in the Company in order to be eligible to be elected or appointed as a Director.
- (c) Despite clause 5.3(b), the Board may resolve by Special Resolution that a person must hold a specified number of shares in the Company to be so eligible.

5.4 Non eligibility of Auditor

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

5.5 Other offices held by Directors

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions determined by the Board.

5.6 Appointment of Director by other Shareholders

- (a) The Founders or Founder Entities (as applicable) may appoint one (1) Director for so long as they hold 10% or more of the Shares in aggregate.
- (b) Shareholders holding a majority of the Shares may appoint one (1) Director for so long as they hold Shares.
- (c) A Director appointed under this clause 5.6 may only be removed by the nominating party with notice in writing to the Company.

5.7 Removal of Directors

A Shareholder that has appointed a Director under clause 5.6 must remove that Director from the Board by giving written notice to the Company and must ensure that the Director resigns as a director of the Company and committees of the Board, if:

- (a) at any time that Shareholder does not meet the requisite Share qualification for the appointment of the relevant Director; or
- (b) the Director:

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

5.8 Board may appoint other Directors

Provided that the number of Directors does not at any time exceed the number (if any) fixed under clause 5.1(c):

- (a) the Board may by Ordinary Resolution appoint a person as an additional director and may set the terms of that Director's engagement;
- (b) the Board may appoint a person as a Director, whether to fill a casual vacancy or as an additional Director; and
- (c) a majority of the Directors may also appoint a person as a Director to make up a quorum for a Board meeting, even if the total number of Directors otherwise present is not enough to make up that quorum.

5.9 Shareholders may appoint other Directors

Provided that the number of Directors does not at any time exceed the number (if any) fixed under clause 5.1(c):

- (a) the Shareholders may by Special Resolution appoint a person as an additional director; and
- (b) the Board may set the terms of that Director's engagement.

5.10 Period of appointment of Directors

Directors do not retire by rotation. A Director continues in office until the Director dies or vacates the office under clause 5.11.

5.11 Vacation of office

A Director vacates office if the Director:

- (a) ceases to be a Director or becomes prohibited from being a Director under the Act;
- (b) ceases to hold the number of Shares required to qualify for office under:
 - i. a Special Resolution passed by Shareholders for the purposes of clause 5.3(c); or
 - ii. clause 5.6,
- (c) resigns his or her office by written notice to the Company under clause 5.12; or
- (d) is not a Founder Director and is removed from office the office of Director by:
 - i. a Special Resolution of the Shareholders under clause 5.13; or
 - ii. a resolution of the Board under clause 5.14.

5.12 Director may resign

A Director may resign as a Director of the Company by written notice to the Company at the Registered Office, provided that if the resignation of a Director will cause the number of Directors to fall below the minimum number required by this constitution or by the Act, the Director must not resign or otherwise vacate his or her office voluntarily until a replacement has been appointed.

5.13 Removal of a Director by Shareholders

- (a) The Company may, by Special Resolution of the Shareholders:

- i. remove a Director from office; and
 - ii. appoint another person as a Director in that Director's place.
- (b) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this constitution or the Act, the removal under clause 5.13(a) has no effect until a replacement has been appointed.

5.14 Removal of a Director by the Board

The Board may by Ordinary Resolution remove a non-Founder Director from office.

5.15 Appointment of Managing Director and other executive Directors

The Board:

- (a) may appoint one or more Directors to the office of Managing Director or to any other executive office for the period and on the terms (including remuneration) as the Board determines;
- (b) may confer on a Managing Director any of the powers that the Board may exercise; and
- (c) subject to the terms of appointment, may revoke or vary:
 - i. the appointment of the Managing Director or other executive Director; or
 - ii. any of the powers conferred on the Managing Director or other executive Director.

5.16 Cessation as Managing Director or executive Director

A person ceases to be Managing Director or other executive Director if he or she ceases to be a Director.

5.17 Power to appoint Alternate Director

Each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place.

5.18 Suspension or termination of appointment of Alternate Director

The appointor may vary, suspend, or terminate the appointment of his or her Alternate Director at any time.

5.19 Notice of appointment of Alternate Director

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

5.20 Multiple votes

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

5.21 Termination of appointment

The appointment of an Alternate Director is terminated by any of the following events:

- (a) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (b) if the appointment of the Alternate Director is terminated by the appointor under clause 5.19;
- (c) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or

- (d) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

5.22 Remuneration of Directors

- (a) The Company may pay the Directors remuneration for carrying out the duties and responsibilities of the office of Director required by the Act.
- (b) The Board may by Ordinary Resolution determine the amount of reasonable remuneration to be paid to each Director under clause 5.22(a).
- (c) The remuneration that is determined by the Board to be paid under clause 5.22(b) is a debt due to the Directors, which accrues from day to day.
- (d) Remuneration under this clause 5.22 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (e) The amount of remuneration to be paid to each Director determined by the Board under clause 5.22(b) does not include any insurance premium paid or agreed to be paid for a Director under clause 24.5.

5.23 Remuneration of Directors for extra services

- (a) If the Board or the Shareholders request a Director to perform services in addition to those required by the Act, the Board may determine that the Company remunerate the Director for those services.
- (b) Remuneration under this clause 5.23 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 5.23 in addition to or substitution for the remuneration paid or payable under clauses 5.22 or 5.24.

5.24 Remuneration for other offices held by a Director

- (a) If a Director holds any other office or position of profit in the Company (other than Auditor) together with the directorship, the Board may determine the remuneration for those other offices held by that Director.
- (b) Remuneration under this clause 5.24 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 5.24 in addition to or substitution for the remuneration paid or payable under clauses 5.22 or 5.23.

5.25 Reimbursement of expenses incurred by Directors

In addition to the remuneration paid or payable under clauses 5.22, 5.23 or 5.24, a Director is entitled to reimbursement of a Director's travelling and other expenses that the Director properly incurs:

- (a) in attending Board meetings or any meetings of a committee of Directors;
- (b) in attending any general meetings of the Company;

- (c) in connection with the Company's business; and
- (d) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

5.26 Director not disqualified

- (a) A Director or a body or entity in which a Director has a direct or indirect interest is not, by reason only of the Director's office, disqualified from:
 - i. entering into any agreement or arrangement with the Company;
 - ii. holding any office or place of profit (other than Auditor) in the Company; or
 - iii. acting in a professional capacity (other than as Auditor) for the Company.
- (b) A Director or a body or entity in which a Director has a direct or indirect interest is not liable to account to the Company for any remuneration, profits or benefits received under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company by reason only of the Director's office.

5.27 Contracts in which Director has an interest

The fact that a Director holds office as a director and has fiduciary obligations arising out of that office:

- (a) does not on its own void or render voidable a contract made by the Director with the Company;
- (b) does not on its own void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
- (c) does not on its own require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest.

5.28 Director may hold other office

- (a) A Director is not, by reason only of the Director's office, disqualified from being or becoming a director or other officer of, or otherwise being interested in:
 - i. any related body corporate of the Company; or
 - ii. any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise.
- (b) A Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in a body corporate under clause 5.28 by reason only of the Director's office.

5.29 Exercise of voting power in another company

Any Director:

- (a) may exercise the voting power conferred by the shares or other interest held by the Company in another company in respect of a resolution appointing or removing him or herself or any Director as a director or other officer of the other company;
- (b) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;

- (c) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (d) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

5.30 Material personal interest - Director's duty to disclose

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless an exception in section 191(2) of the Act applies.
- (b) A notice required by clause 5.30(a) must be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter and must include details of:
 - i. the nature and extent of the interest; and
 - ii. the relation of the interest to the affairs of the Company.

5.31 Director may give standing notice about a material personal interest

- (a) A Director required to give notice under clause 5.30 may give standing notice of the nature and extent of the interest in the matter.
- (b) A notice under clause 5.31(a) may be given:
 - i. at a Board meeting either orally or in writing; or
 - ii. to the other Directors individually in writing.
- (c) If the standing notice is given to the other Directors individually in writing:
 - i. the notice is effective when it has been given to every Director; and
 - ii. the notice must be tabled at the next Board meeting after it is given.
- (d) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

5.32 Voting and completion of transactions in which a Director has a material personal interest

If a Director discloses the nature and extent of an interest under clause 5.30 or 5.31 and the Act, or the interest is one that does not need to be disclosed under clause 5.30:

- (a) the Director may vote on matters that relate to the interest;
- (b) any transactions that relate to the interest may proceed; and
- (c) if the disclosure is made before the transaction is entered into:
 - i. the Director may retain any benefits under the transaction; and
 - ii. the Company must not avoid the contract merely because of the existence of the interest.

5.33 Wholly owned subsidiary

If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:

- (a) the Director acts in good faith in the best interests of the holding company; and

- (b) the Company is not insolvent at the time the Director acts and the Company does not become insolvent because of the Director's act.

5.34 Observers

- (a) The Investors may for so long as they collectively hold 10% or more of the Shares in aggregate appoint one (1) observer to attend meetings of the Board by providing written notice to the Company (**Observer**).
- (b) An Observer appointed under clause 5.34(a) is entitled to attend and speak at, but not vote at, any meetings of the Board or any committee of the Board. The Company must deliver all written materials and other information given to Directors in connection with such meetings to any such Observer at the same time that those materials or information are given to the Directors.

6. Management of business by the Board

6.1 Powers of the Board

- (a) Unless otherwise provided by the Act or this constitution, the Business of the Company is to be managed by or under the direction of the Board.
- (b) The Board may exercise all of the powers of the Company, except any powers that any provision of the Act or this constitution requires the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 6.1(b), the Board may exercise all the powers of the Company to:
 - i. borrow money;
 - ii. charge any property or business of the Company or all or any of its uncalled capital; and
 - iii. issue debentures or give any other security for a debt, liability or obligations of the Company or of any other person.

6.2 Board Decision by Special Resolution

The Board must not make (and must procure that any of its Subsidiaries do not make) any decision covering a matter listed in Schedule 1 without the approval of the Board by Special Resolution.

6.3 Directors must keep transactions confidential

Every Director and other agent or officer of the Company must:

- (a) keep all aspects of all transactions of the Company confidential, except:
 - i. to the extent necessary to enable the person to perform his or her duties to the Company;
 - ii. as required by law; or
 - iii. when requested by the Board to disclose information to the Auditor or a general
 - iv. meeting; and
- (b) if requested by the Board, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

6.4 Appointment of attorney for Company

The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this constitution.

6.5 Delegation by the Board

- (a) The Board may delegate any of its powers to:
 - i. a committee of Directors;
 - ii. a Director;
 - iii. an employee of the Company; or
 - iv. any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The effect of the delegate so exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

6.6 Execution of documents

Without limiting the way in which documents may be signed by the Company pursuant to the Act, the Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included;

6.7 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

7. Proceedings of the Board

7.1 Board circulating resolution without a meeting

- (a) The Board may pass a valid resolution without a Board meeting being held if those Directors who alone or together comprise a Special Majority sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director comprising the Special Majority signs.

7.2 Calling Board meetings

A Director may at any time, and the Secretary on the request of a Director must, call a Board meeting.

7.3 Notice of meeting

Reasonable notice of every Board meeting must be given individually to each Director under clause 22.5 (but in any event, no less than 2 Business Days' written notice before the Board Meeting), but failure to give or receive reasonable notice of that meeting will not invalidate

anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error.

7.4 Conduct of Board meetings

- (a) A Board meeting may be held:
 - i. in person;
 - ii. by telephone;
 - iii. by audio-visual linkup; or
 - iv. using any technology consented to by all the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)iv may be a standing consent.
- (c) If a Director gives his or her consent under clause 7.4(b) that Director may only withdraw the consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a Board meeting where that meeting is conducted by telephone, audio-visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A Board meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Board meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this constitution, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

7.5 Appointment of Chair for Board meetings

- (a) The Board may elect a Director to the office of Chair of the Board.
- (b) The Board may determine the period for which the Chair is to hold office.
- (c) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
 - i. a Director has not already been elected to chair the meeting; or
 - ii. the previously elected Chair is not available or declines to act as Chair for the
 - iii. meeting or part of the meeting.

7.6 Quorum at Board meetings

- (a) If the Company has more than one Director and unless the Board determines otherwise, the quorum for a Board meeting is two Directors (one of whom must be a Founder Director if, and for so long as, any Founder Director continues to occupy such role at the relevant time) and the quorum must be present at all times during the meeting.

- (b) Subject to clause 5.20, in determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted.

7.7 Voting by Chair at Board meetings

In case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting does not have a casting vote on that resolution in addition to any vote the Chair of that meeting has in his or her capacity as a Director in respect of that resolution.

7.8 Passing of resolutions at Board meetings

A resolution of the Board will be passed if a Simple Majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

7.9 Committee powers and meetings

- (a) Any committee of Directors may exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this paragraph.

7.10 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or Shareholder of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act, all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

8. General meetings

8.1 Shareholders' circulating resolution without a general meeting

- (a) This clause 8.1 applies to all resolutions of Shareholders that are required or permitted to be passed by a general meeting, other than a resolution to remove an Auditor.
- (b) The Shareholders may pass a resolution without a general meeting being held if a Special Majority of the Shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) Separate copies of documents may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy.
- (d) The resolution made under clause 8.1(b) is passed when the resolution is signed by the last Shareholder comprising the Special Majority signs the document.
- (e) When the Shareholders are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
 - i. to give Shareholders information or a document relating to the resolution, by giving Shareholders that information or document with the document to be signed;

- ii. to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the document to be signed by Shareholders; and
- iii. to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 8.1 (e)(i).

8.2 No annual general meetings

Except as required under the CSF Regime, while the Company is a proprietary company:

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

8.3 Calling a general meeting

- (a) A Director, the Directors or the Board may, by written notice, call a general meeting at a time and place as the Director, the Directors or the Board resolve.
- (b) Shareholders may requisition the holding of a general meeting only in accordance with the Act and the Board must call a general meeting within 21 days after receiving that requisition.
- (c) Shareholders may call and arrange to hold a general meeting only in accordance with the Act.

8.4 Right to attend general meetings

- (a) Each Shareholder and any Auditor of the Company is entitled to attend a general meeting.
- (b) Each Director is entitled to attend and speak at a general meeting.
- (c) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
- (d) A Shareholder's proxy or representative may attend a general meeting only as provided by this constitution and the Act.

8.5 Amount of notice of general meetings

- (a) Subject to clause 8.5(b), at least 21 days' notice must be given of a general meeting.
- (b) Except if a general meeting is called for the purpose of removing an Auditor, a general meeting may be held on shorter notice than 21 days if Shareholders with at least 95% of the votes that may be passed at the meeting so agree before the meeting.

8.6 Calculation of period of notice

In computing the period of notice under clause 8.5, the day on which the notice is given or taken to be given is to be disregarded.

8.7 Notice of general meetings

Written notice of a general meeting must be given individually to each person entitled to receive notice under the Act, including:

- (a) each Shareholder entitled to vote at the meeting;
- (b) each Director; and
- (c) the Auditor (if any) of the Company.

8.8 Content of notice

A notice calling a general meeting must comply with the Act and must:

- (a) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (b) state the general nature of the general meeting's business;
- (c) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution; and
- (d) if a Shareholder is entitled to appoint a proxy, contain a statement setting out the following information:
 - i. that the Shareholder has a right to appoint a proxy and that the proxy does not need to be a Shareholder of the Company; and
 - ii. that a Shareholder who is entitled to cast two or more votes may appoint two or more proxies and may specify the proportional number of votes each proxy is appointed to exercise.

8.9 Validity of resolutions

The non receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

8.10 Board may cancel or postpone a general meeting

- (a) The Board may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (b) Clause 8.10(a) does not apply to general meetings called by court order or in accordance with the Act:
 - i. by the Board on the request of Shareholders, unless the Shareholders who requested the meeting consent to the postponement or cancellation; or
 - ii. by Shareholders, unless the Shareholders who called the meeting consent to the postponement or cancellation.

8.11 Contents of notice postponing or cancelling a general meeting

A notice of postponement or cancellation of a general meeting must specify:

- (a) the reasons for the postponement or cancellation; and
- (b) if the general meeting is postponed:
 - i. the postponed date and time for the holding of the general meeting;
 - ii. a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
 - iii. if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

8.12 Number of clear days for postponement of general meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Act.

8.13 Business at postponed general meeting

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

8.14 Proxy or representative at postponed general meeting

Where:

- (a) an instrument or power of appointment authorises a proxy or representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of representative, then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of representative unless the Shareholder appointing the proxy or representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

8.15 Validity of resolutions

The non receipt of notice of cancellation or postponement of a general meeting by, or the accidental omission to give notice of cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate the cancellation or postponement of a meeting or any resolution passed at the postponed general meeting.

8.16 Time and place for general meetings

A general meeting must be held at a reasonable time and place.

8.17 Technology

A general meeting may be held at two or more venues using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

8.18 Quorum for a general meeting

The quorum for a general meeting or an adjourned general meeting is a Simple Majority and the quorum must be present at all times during the meeting.

8.19 Determination of quorum at general meeting

In determining whether a quorum is present at a general meeting:

- (a) representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's representative) are to be counted;
- (b) if a Shareholder has appointed more than one proxy or representative, only one of them is to be counted;

- (c) if an individual is attending both as a Shareholder and as a proxy or representative, that person is to be counted only once; and
- (d) if an individual is attending as a proxy or representative for more than one Shareholder, that person is to be counted only once.

8.20 Absence of quorum at a general meeting

- (a) If no quorum is present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting:
 - i. if called in accordance with the Act by a Director at the request of Shareholders or by Shareholders, is dissolved; and
 - ii. in any other case, is to be adjourned to a date, time and place as specified by the Board.
- (b) If the Board does not specify one or more of the requirements in clause 8.20(a)(ii), the general meeting is adjourned to:
 - i. if the date is not specified, the same day of the following week;
 - ii. if the time is not specified, the same time; and
 - iii. if the place is not specified, the same place.

8.21 Adjourned meeting (quorum)

If no quorum is present at the general meeting adjourned under clause 8.20 within 30 minutes after the time for the general meeting, the Board may, in its absolute discretion, declare the meeting dissolved or deem that those Shareholders present in person form a quorum and may transact the business for which the meeting was called.

8.22 Appointment and powers of Chair at general meetings

The Chair of the Board will be entitled to take the chair at general meetings.

8.23 Absence of Chair at general meeting

- (a) If there is no Chair, or if the Chair is unable to chair or declines to act at a general meeting, the Board may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
- (b) If a general meeting is held and the Chair, or the person elected under clause 8.23(a), is not available within 30 minutes after the time appointed for the holding of the meeting or is unable to chair or declines to act, the following may take the chair of the meeting (in order of precedence):
 - i. the deputy chair (if any);
 - ii. a Director chosen by a majority of the Directors present;
 - iii. the only Director present; or
 - iv. a Shareholder chosen by a majority of the Shareholders present in person or by proxy or representative who are entitled to vote at the meeting.
- (c) If an acting chair becomes unable to chair or declines to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.

- (d) Any person taking the chair of the general meeting under this clause 8.23 will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this constitution.

8.24 Powers of the Chair and conduct of general meetings

- (a) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (b) Any decision of the Chair is final.
- (c) The Chair may delegate any power conferred by this paragraph to any person.

8.25 Adjournment of general meetings

- (a) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) The Chair must adjourn a general meeting if the Shareholders present in person or by proxy or representative with a Simple Majority of votes at the meeting agree or direct that the Chair must do so.
- (c) If any general meeting is adjourned for one month or more, a new notice of the adjournment must be given to the Shareholders in the same manner as notice was or ought to have been given of the original meeting.

8.26 Resumption of adjourned general meeting

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 8.25.
- (b) The resumed meeting may only be adjourned by the Chair.

8.27 Shareholders' resolutions

The Shareholders may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

8.28 Resolution determined by majority

- (a) At a general meeting, all resolutions submitted to a general meeting will be decided by a Simple Majority of votes except where a greater majority is required by this constitution or the Act.
- (b) A resolution, dealing with a matter listed in Schedule 2, to be considered at a meeting of Members, must be resolved by a Special Majority of the Members including the affirmative vote of at least one Investor.

8.29 Voting by Chair of general meetings

In case of an equality of votes on a resolution at a general meeting, the Chair does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

8.30 How voting is carried out

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded before, on, or immediately after, the declaration of the result of the vote on a show of hands.

- (b) Unless a poll is demanded in accordance with this constitution, on a show of hands, either a declaration by the Chair that a resolution has been carried, carried by a particular majority or not carried or an entry to that effect in the minutes signed by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

8.31 Matters on which a poll may be demanded at a general meeting

A poll may be demanded on any resolution other than resolutions concerning:

- (a) the election of the Chair; or
- (b) the adjournment of the general meeting.

8.32 Demand for a poll

- (a) Subject to clause 8.31, a poll may be demanded by:
 - i. the Chair;
 - ii. at least two Shareholders present in person or by proxy or by representative; or
 - iii. any one or more Shareholders holding shares conferring not less than five percent of the total voting rights of all Shareholders having the right to vote on the resolution.
- (b) Any demand for a poll may be withdrawn.

8.33 Conduct of poll

The Chair may decide in each case the manner in which a poll is taken and the result of the poll is the meeting's resolution of the motion on which the poll was demanded.

8.34 Right to vote at general meetings

Subject to any rights or restrictions attached to any class of shares and subject to clause 8.35, at a general meeting:

- (a) on a show of hands, each Shareholder has one vote; and
- (b) on a poll, each Shareholder has one vote for each fully paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share they hold.

8.35 Right to vote of joint holder

If a share is held jointly, and more than one Shareholder votes at a general meeting (either personally or by duly authorised proxy or representative), only the vote of the Shareholder whose name appears first in the Register of Shareholders counts.

8.36 Right to vote if call unpaid on shares

A Shareholder is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Shareholder for which calls or other moneys are due and payable to the Company at the time of the general meeting.

8.37 Objections to right to vote

A challenge to a right to vote at a general meeting:

- (a) may only be made at the general meeting; and
- (b) must be determined by the Chair whose decision is final.

8.38 Appointment of proxies and representatives

- (a) A Shareholder who is entitled to attend and cast a vote at a general meeting may appoint a person as that Shareholder's proxy or, if the Shareholder is a body corporate, a representative to attend and cast a vote at that meeting.
- (b) If a proxy appointed to attend and cast a vote at a general meeting under clause 8.38(a) is a body corporate, the proxy may appoint a representative to attend and cast a vote at that meeting.
- (c) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (d) If a Shareholder is entitled to cast two or more votes at a general meeting, that Shareholder may appoint two proxies. If the Shareholder appoints two proxies and the appointment does not specify the proportion or number of the Shareholder's votes that each proxy may exercise, each proxy may exercise half of the votes. Any fractions of votes will be disregarded.
- (e) Neither the proxy nor the representative need be a Shareholder.
- (f) Any proxy or representative appointed under this clause must be appointed in accordance with, and will have the rights set out in, this constitution and the Act.
- (g) An appointment of proxy or representative received at an electronic address will be taken to be signed by the Shareholder or proxy as applicable if the appointment has been authenticated in accordance with the Act.

8.39 Validity of proxy vote

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - i. the appointing Shareholder dies; or
 - ii. the Shareholder is mentally incapacitated; or
 - iii. the Shareholder revokes the proxy's appointment; or
 - iv. the Shareholder revokes the authority under which the proxy was appointed by a third party; or
 - v. the Shareholder transfers the share in respect of which the proxy was given.
- (b) If the appointing Shareholder attends the meeting for which a proxy has been appointed by that Shareholder, the proxy's appointment is not revoked unless the appointing Shareholder actually votes on any resolution for which the proxy is proposed to be used.

8.40 General meeting provisions apply to class meetings

The provisions of this constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by the holders of a Simple Majority of the issued shares of the class;
- (b) any holder of shares of the class, present in person or by proxy or by representative, may demand a poll; and

(c) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

8.41 Director entitled to notice of class meetings

A Director is entitled to:

- (a) receive notice of separate meetings of the holders of any class of shares in the capital of the Company;
- (b) attend all those meetings; and
- (c) speak at those meetings.

8.42 Shareholder decisions limited

Unless this Constitution of the Corporations Act provides otherwise, all decisions of the Company are exercisable by the Board. Shareholders may make decisions and pass resolutions only as set out in this Constitution.

9. Minutes of meetings

9.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each Board meeting and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, Board meetings and meetings of any committee of the Directors.

9.2 Minutes to be signed by the Chair

Any minutes of any general meetings of the Company, Board meetings or meetings of any committee of the Board must be signed by the Chair of the meeting or by the Chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

9.3 Shareholders' access to minutes

- (a) The Board must ensure that the minute books for general meetings are open for inspection by Shareholders free of charge.
- (b) If requested by a Shareholder in writing, the Board must ensure the Company sends a copy of any minutes or extract of minutes of general meetings requested within 14 days after the request or, if the Board determines that payment should be made for the copies, within 14 days after the Company receives the payment.

10. Secretary

10.1 Appointment of Secretary

The Board may appoint one or more persons to the office of secretary to the Company but need not do so.

10.2 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.

- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

10.3 Suspension or termination of appointment of Secretary

The Board may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the Company and the Secretary.

11. Auditor

11.1 Appointment of Auditor

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

11.2 Auditor and meetings of Shareholders

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

12. Share capital

12.1 Board to issue shares

Subject to the Act and any special rights conferred on the holders of any Shares or class of Shares, the Board:

- (a) may issue or dispose of Shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Board determines;
- (b) may grant to any person an option over Shares or pre-emptive rights at any time and for any consideration as the Board determines; and
- (c) has the right to settle the manner in which fractions of a Share, however arising, are to be dealt with.

12.2 Pre-emption for certain existing Shareholders on issue of Shares

- (a) With the exception of any Shares issued under clause 12.2(c), before issuing Shares of a particular class, the Board must offer them to each non-CSF Shareholder holds Shares of that class. For the avoidance of doubt, CSF Shareholders in that class are not entitled to be issued Shares under this clause 12.2(a).
- (b) The pre-emption rights set out in section 254D of the Corporations Act are expressly excluded.
- (c) The Board may issue such Equity Securities without first offering them to Shareholders holding Shares of a particular class under clause 12.2(a), in the following circumstances:
 - i. **(conversion of Equity Securities)** an issue of Equity Securities on conversion or exercise of any Equity Securities;
 - ii. **(buy-back funding)** an issue of Equity Securities where the proceeds of the issue are used to fund a buy-back, cancellation, purchase or redemption of any Equity Securities by the Company envisaged under this Constitution, any Approved Share Plan or terms of issue or other applicable constitutional document for a class of Equity Securities;

- iii. **(Approved Share Plan)** an issue of Equity Securities under any Approved Share Plan;
 - iv. **(Share Split & Dividends)** Securities issued in connection with share splits or the issue of dividends which is approved by a Special Resolution of the Board;
 - v. **(IPO)** Securities issued as part of an IPO which is approved by a Special Resolution of the Board;
 - vi. **(Asset or Share Sale)** Securities constituting all or part of the consideration for a bona-fide acquisition of assets or shares by the Company which is approved by a Special Resolution of the Board; or
 - vii. **(Investor Top Up)** Any top up Shares required to be issued to the Investors under a previously agreed arrangement.
- (d) As far as practicable, the number of Shares offered to each Shareholder under clause 12.2(a) must be in proportion to the number of Shares of that class already held by that Shareholder.
- (e) To make the offer, the Board must give each Shareholder a statement setting out the terms of the offer, including:
- i. the number of Shares offered to that Shareholder;
 - ii. the total number of Shares offered; and
 - iii. the period for which the offer will remain open.
- (f) The Board may issue any Shares not taken up under the offer under clause 12.2(a) as it sees fit.
- (g) The Shareholders, by resolution in general meeting, may authorise the Board to make a particular issue of shares without complying with clauses 12.2(a) to 12.2(e).

12.3 Preference shares

Subject to the Act, the Company may issue preference shares or convert issued Shares into preference shares (but not redeemable preference shares) including with respect to the following matters if approved by Special Resolution of the Shareholders:

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non-cumulative dividends;
- (d) voting; and
- (e) priority of payment of capital and dividends in relation to other Shares or classes.

12.4 Redeemable preference shares

The Company may issue redeemable preference shares only if the following matters have been approved by Special Resolution of the Shareholders:

- (a) whether the preference shares are liable to be redeemed at:
 - i. a fixed time or on the happening of a particular event;
 - ii. the Company's option; or
 - iii. the Shareholder's option.

12.5 Registered holder to be treated as absolute owner

- (a) Unless otherwise required by the Act or this constitution, the Company must treat the registered holder of a Share as the absolute owner.
- (b) Unless ordered to do so by a court, the Company is not obliged to recognise:
 - i. any trust, equitable, contingent, future or partial interest in any Share;
 - ii. any interest in any fractional part of a Share; or
 - iii. any other right (other than an absolute right) in respect of any Share.

12.6 Joint holders of Shares

- (a) Where two or more persons are registered as the joint holders of a Share:
 - i. they are taken to hold the Share as joint tenants with rights of survivorship;
 - ii. each Shareholder is jointly and severally liable for any payment in respect of the Share, including any call made in respect of any money unpaid on the Share;
 - iii. the Shareholder whose name first appears in the Register of Shareholders in respect of the Share is deemed to be the registered holder of the Share for the purposes of this constitution and any action permitted or required by the constitution; and
 - iv. any one of the joint holders of the Share may give an effective receipt for any dividend, bonus or return of Share capital payable to the joint holders.
- (b) Without limiting the above, the Company is not bound:
 - i. to register more than three persons as joint holders of a Share; or
 - ii. to issue more than one Certificate or holding statement in respect of Shares jointly held.

12.7 Changes to Shares

- (a) Subject to the Act and this constitution, the Company may:
 - i. convert an Ordinary Share to a preference share, other than to a redeemable preference share;
 - ii. convert a preference share to an Ordinary Share;
 - iii. reclassify any Shares into classes of Shares;
 - iv. cancel any Shares; and
 - v. buy back its own Shares.
- (b) Subject to the Act, the Company may convert all or any of its Shares into a larger or smaller number of Shares by Ordinary Resolution passed at general meeting.

12.8 Varying and cancelling class rights

- (a) The Company may vary or cancel the rights attaching to any class of Shares only if the variation or cancellation is permitted by the Act and is approved by Special Resolution of each of:
 - i. the Shareholders; and
 - ii. the Shareholders holding Shares of the relevant class.
- (b) The Board must give written notice of the variation or cancellation to the Shareholders holding the Shares of the relevant class within seven days of the variation or cancellation.

- (c) The issue or creation of new Shares in a particular class ranking equally with existing shares of the relevant class will not be considered to be a variation of the rights conferred on Shareholders holding existing shares of the relevant class.

12.9 Board to make calls

The Board may:

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

12.10 Prepayment of calls and interest

The Board may:

- (a) accept from a Shareholder the whole or a part of the amount unpaid on a Share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable and at the rate as is agreed on between the Board and the Shareholder paying the sum.

12.11 Time of call

A call is taken to be made at the time when the Ordinary Resolution of the Board authorising the call is passed.

12.12 Shareholders' liability

Other than in respect of money unpaid on the Shares of a Shareholder that are payable at fixed times, each Shareholder must, on receiving not less than 15 Business Days notice specifying the due date and place of payment, pay to the Company the amount called on that Shareholder's Shares.

12.13 Non receipt of notice

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

12.14 Interest payable if non payment of calls

- (a) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Board.
- (b) The Board may waive any interest payable in whole or in part.

12.15 Forfeiture on non payment of calls

If a Shareholder fails to pay any call or instalment of a call when due, the Board may serve a notice on the Shareholder:

- (a) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 12.14 and all costs and expenses that may have been incurred by the Company by reason of the failure to pay; and
- (b) stating that failure to pay by the stated date will result in the Shares being forfeited.

12.16 Forfeiture for failure to comply with notice

- (a) If the requirements of the notice issued under clause 12.15 are not complied with, any Share in respect of which the notice has been given may be forfeited by an Ordinary Resolution of the Board at any time before the payment required by the notice is received.
- (b) Forfeiture under clause 12.16(a) will include any dividend and other distribution declared or to be made in respect of the forfeited Share that is not paid or distributed before the forfeiture.
- (c) The non receipt of any notice by any Shareholder, or the accidental omission to give notice of forfeiture to any Shareholder, will not invalidate the forfeiture.

12.17 Notice of forfeiture

If any Share is forfeited under clause 12.15, notice of the forfeiture must be given to the Shareholder whose Share was forfeited and an entry of the forfeiture and its date must be made in the Register of Shareholders.

12.18 Cessation of shareholding and liability

- (a) A Shareholder whose Share has been forfeited ceases to be a Shareholder in respect of that Share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture in respect of the Share plus interest at the rate set by the Board from the date of forfeiture and reasonable expenses of sale.
- (b) Liability under clause 12.17 will cease only when the Company receives payment in full of all outstanding money in respect of the Shares.

12.19 Action to recover called money

- (a) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:
 - i. the Shareholder sued was a registered holder of the Share in respect of which the call was made at the time the call was made;
 - ii. the resolution making the call is recorded in a minute book; and
 - iii. notice of the call was given to the Shareholder sued in accordance with this constitution.
- (b) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

12.20 Disposal of forfeited share

Subject to the Act, the Board may cause a forfeited Share to be sold, transferred or otherwise disposed of on the terms and in the manner the Board determines.

12.21 Cancellation of forfeited share

The Company may only cancel a forfeited Share in accordance with the Act.

12.22 Evidence of forfeiture

A statement in writing declaring that:

- (a) the person making the statement is a Director or a Secretary; and
- (b) a Share in the Company has been forfeited in accordance with this constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

12.23 Transfer of forfeited share

- (a) The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share under clause 12.20 and may execute or effect a transfer of the Share in favour of the person to whom the Share is sold or disposed of.
- (b) If a forfeited Share is sold, the purchaser of the forfeited Share must be registered as the holder of the Share by the Company and is not bound to see to the application of any money paid as consideration.

12.24 First and paramount lien

Unless the Board otherwise resolves, the Company has a first and paramount lien on every Share and any dividend payable in respect of the Share where there is any amount payable to the Company in respect of the Share at any time as a result of:

- (a) a call; or
- (b) if the Shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (c) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Shareholder.

12.25 Company's rights to recover payments

- (a) A Shareholder must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Shareholder, the death of a Shareholder or the Shareholder's Shares or any distributions on the Shareholder's Shares, including dividends, where the Company is either:
 - i. obliged by law to make the relevant payment; or
 - ii. advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to advise the Shareholder in advance of its intention to make the payment referred to in clause 12.25(a).

12.26 Reimbursement is a debt due

- (a) The obligation of the Shareholder to reimburse the Company is a debt due to the Company as if it were a call on all the Shareholder's Shares, duly made at the time when the written demand for reimbursement is given by the Company to the Shareholder.
- (b) The provisions of this constitution relating to non payment of calls, including payment of interest and sale of the Shareholder's Shares under lien, apply to the debt.

12.27 Sale of shares

- (a) Subject to clause 12.27(a), the Company may sell any Share over which it has a lien.
- (b) The Company must not sell a Share under clause 12.27(a):
 - i. unless a sum in respect of which the lien exists is presently payable; and
 - ii. until 14 days has passed after written notice demanding payment of the sum referred to in 12.27(b)(i) has been given to the Shareholder, or to the person entitled to the Share by reason of the Shareholder's death or bankruptcy.

12.28 Transfer on sale under lien

- (a) For the purpose of giving effect to a sale under clause 12.27, the Company may receive the consideration, if any, given for the Share so sold and may execute a transfer of the Share sold in favour of the purchaser of the Share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.
- (b) The purchaser is not bound to see to the application of the purchase money.

12.29 Irregularity or invalidity

The title of the purchaser to the Share is not affected by any irregularity or invalidity in connection with the sale of the Share.

12.30 Proceeds of sale

The proceeds of a sale under clause 12.27 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the Share immediately before the sale.

12.31 Issue of Certificates

- (a) The Company must issue each Shareholder with a Certificate for any Shares held by the relevant Shareholder.
- (b) The Company may issue a single Certificate for more than one Share held by a Shareholder.

12.32 Form of Certificate

Every Certificate:

- (a) must include all information required by the Act; and
- (b) must be issued in the form determined by the Board.

12.33 Certificate of joint holders

The delivery of a Certificate in relation to a Share to the registered holder of the Share or to the joint holders' agent is effective delivery to all the joint holders of that share.

12.34 Pre-emption for existing Shareholders on transfer of Shares

- (a) Except where the proposed transfer is a Permitted Transfer under clause 12.35, and subject to the requirements under this clause 12, before transferring Shares of a particular class, a Shareholder must offer the Shares to the Company.
- (b) If the Company does not exercise its right to acquire the Shares referred to in clause 12.34(a) within 14 Business Days following the date of service upon the Company of an offer pursuant to that clause, the Shareholder must then offer the Shares to all non-CSF Shareholders in the Company.
- (c) As far as practicable, the number of Shares offered to each Shareholder under clause 12.34(a) must be in proportion to the number of Shares that Shareholder already holds.
- (d) To make the offer under clause 12.34(a) and (b), the Shareholder must give the Company or the Shareholders (as applicable) a statement setting out the terms of the offer, including:
 - i. the number of Shares offered;
 - ii. the price for each Share; and
 - iii. the period for which the offer will remain open, which must be not less than 14 Business Days.

- (e) If some of the Shares offered under clause 12.34(b) have not been accepted by the end of the period specified under clause 12.34(d)(iii), the Shareholder must re-offer the remaining Shares on the same terms to those Shareholders (if any) who accepted the offer in proportion to the number of Shares that they are deemed to then hold by having already accepted some of the Shares on offer.
- (f) The Shareholder may transfer any Shares not taken up under the offers under clauses 12.34(a) and 12.34(e) as that Shareholder sees fit provided that the terms, including price, are no more commercially attractive or advantageous to a third party than the terms in the offers made under clause clauses 12.34(a) and 12.34(e).

12.35 Permitted Transfers

- (a) The following transfers are permitted transfers ("**Permitted Transfers**"):
- i. transfers from any person entitled to a Share because of the death or bankruptcy of a Shareholder (in which case clauses 12.44, 12.45, 12.46 and 12.47 apply, as applicable); or
- ii. Subject to clause 12.35(a)iii, but despite any other provision of this agreement:
 - a. a non-CSF Shareholder may dispose any or all of its Securities from time to time to any of its Affiliates without restriction; and
 - b. an Affiliate of a non-CSF Shareholder may dispose any or all of its Securities from time to time to that Shareholder or another Affiliate of that Shareholder without restriction.
- iii. If a person to whom a Shareholder has disposed any Securities ceases to be an Affiliate (as applicable) of that Shareholder:
 - a. that Shareholder must procure that that person immediately disposes the relevant Securities back to the original transferor (who must purchase the Securities); and
 - b. (all rights attaching to the Securities held by that person will be suspended until the Disposal back to the original transferor is completed.

12.36 Restrictions

Despite any other provision of this constitution, a Shareholder may not dispose of Shares if that sale or disposal would result in:

- (a) the Company having to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Act; or
- (b) a Competitor holding Shares, other than with the Special Resolution of the Board.

12.37 Forms of instrument of transfer

Subject to this constitution, Shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Board approves and that is in compliance with the Act.

12.38 Execution and delivery of transfer

The Board must refuse to register a transfer if the transfer:

- (a) is not executed by or on behalf of both the transferor and the transferee;

- (b) is not left for registration at the Registered Office, accompanied by the Certificate (if any) of the Share to be transferred and any other information that the Board reasonably requires to establish the right of the transferor to make the transfer; or
- (c) otherwise does not comply with the requirements set out in Division 2 of Part 7.11 of the Act.

12.39 Registration of transfers

A person transferring a Share remains the holder of the Share until the transfer is registered and the name of the person to whom the Share is transferred is entered in the Register of Shareholders in respect of the Share and a transfer of a Share does not pass the right to any dividends declared on the Share until registration.

12.40 Company to register transfer without charge

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

12.41 Power to refuse to register

- (a) The Board may refuse to register any transfer of Shares for any reason except that neither the Board nor the Company may refuse to register a transfer of Shares made under a valid exercise of an enforcement power under a mortgage of the Shares the subject of the transfer. The Board and the Company may rely on receipt of the transfer as conclusive notice that the mortgage has become enforceable.
- (b) The Board must notify the person who deposited the instrument of transfer of any refusal to transfer the Shares within six months from the date the instrument of transfer is lodged.

12.42 Company to retain instrument of transfer

The Board must ensure that the Company retains every instrument of transfer that is registered for the period as the Board determines.

12.43 Return of instrument of transfer

If the Board refuses registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

12.44 Death of sole holder of share

- (a) In respect of a Share owned by a Shareholder (and not owned by several holders jointly), if that Shareholder dies the Company must recognise only the personal representative of the deceased Shareholder as being entitled to the deceased Shareholder's interest in the Share.
- (b) If the personal representative gives the Board the information reasonably required by the Board to establish the personal representative's entitlement to be registered as holder of the Share, the personal representative is entitled, whether or not registered as the holder of the Share, to the same rights as the deceased Shareholder and:
 - i. may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or

- ii. may, by giving a completed transfer form to the Company, transfer the Share to another person.
- (c) On receiving an election under clause 12.44(b)(i), the Company must register the personal representative as the holder of the Share.
- (d) A transfer under clause 12.44(b)(ii) is subject to all provisions of this constitution relating to transfers of Shares generally.

12.45 Death of joint holder of share

- (a) If one of the registered joint holders of a Share dies, the Company must only recognise the surviving holder or holders of the Share as being entitled to the deceased shareholder's interest in the Share.
- (b) The survivor of the joint holder or holders named first in the Register of Shareholders will for the purposes of this constitution be treated as the first named holder of the Share.

12.46 Liability of estate

The estate of the deceased Shareholder is not released from any liability in respect of the Shares.

12.47 Transmission of shares on bankruptcy or mental incapacity

- (a) If a person entitled to a Share because of the bankruptcy of a Shareholder or the mental incapacity of a Shareholder gives the Board the information reasonably required by the Board to establish the person's entitlement to be registered as holder of the Share, the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Shareholder and may:
 - i. by giving a written notice to the Company, elect to be registered as the holder of the Shares; or
 - ii. by giving a completed transfer form to the Company, transfer the Shares to another person.
- (b) On receiving an election under clause 12.47(a)(i), the Company must register the person as the holder of the Shares.
- (c) A transfer under clause 12.47(a)(ii) is subject to all provisions of this constitution relating to transfers of Shares generally.
- (d) A person registered as a Shareholder as a consequence of this clause 12.47 must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.

12.48 General Restriction on Security Interests

A Shareholder (other than the Investors) may not grant any Security Interest over Securities without first obtaining Board approval by Special Resolution and at least one Investor.

12.49 Approved Share Plan

- (a) At any time, the Board may establish a formal written employee incentive plan to issue Shares to eligible service providers (whether Directors, employees or contractors) that, together with any similar employee or management incentive arrangements (if any), in aggregate, results in the issue of Shares of an amount up to 10% of the fully diluted share capital of the Company (**Approved Share Plan**).

- (b) the Share Plan will authorise the Directors to issue Shares under the Approved Share Plan to eligible service providers in their discretion;
- (c) where:
 - i. the Board wishes to increase the number of Shares which may be issued under the Approved Share Plan to an amount greater than 10% of the fully diluted share capital of the Company; or
 - ii. the Board wishes to issue any Securities to any of its personnel (including management, employees, contractors or other personnel) other than under the Approved Share Plan,
then:
 - iii. the Board may only do so with the approval of a Special Resolution of the Board.

13. Drag rights

13.1 Right to give Drag Notice

If one or more Shareholders intend to sell Equity Securities equal to or greater than 70% of the Ordinary Shares on a Fully Diluted Basis ("**Drag Seller**") to an Unrelated Buyer or to a Shareholder (or Affiliate of it) that is not an Affiliate of the Drag Seller ("**Drag Buyer**") then the Drag Seller may give a notice ("**Drag Notice**") to each Shareholder ("**Dragged Shareholder**") with a copy to the Company.

13.2 Contents of Drag Notice

A Drag Notice must state:

- (a) (**Drag Seller**) the identity of the Drag Seller;
- (b) (**Drag Buyer**) the identity of the Drag Buyer;
- (c) (**Equity Securities being sold**) the number and class of Equity Securities proposed to be sold by the Drag Seller;
- (d) (**Drag Proportion**) the percentage of the total number of Equity Securities held by the Drag Seller proposed to be sold ("**Drag Proportion**");
- (e) (**sale price**) the cash sale price for each Equity Security which must be the same price for the Equity Securities sold by the Drag Seller ("**Drag Sale Price**") and any other terms of the proposed sale by the Drag Seller to the Drag Buyer;
- (f) (**sale required**) that the Drag Seller requires each Dragged Shareholder to sell the Drag Proportion of the Dragged Shareholder's Equity Securities ("**Dragged Securities**") to the Drag Buyer at the Drag Sale Price and on the other terms set out in the Drag Notice, which terms must be no less favourable to the Dragged Shareholder than the terms on which the Drag Seller is proposing to sell its Equity Securities to the Drag Buyer; and
- (g) (**completion date**) the Drag Seller's reasonable best estimate of the date for completion of the sale to the Drag Buyer, which unless otherwise agreed between the Drag Seller, the Drag Buyer and the Company, must be not less than 10 Business Days after the date of the Drag Notice.

13.3 Effect of Drag Notice

If a Drag Notice is given then:

- (a) each Dragged Shareholder must sell its Dragged Securities to the Drag Buyer on the terms stated in the Drag Notice; and
- (b) the Drag Seller must not complete the proposed sale to the Drag Buyer unless, at the same time, the Drag Buyer buys all the Dragged Securities of each Dragged Shareholder at the Drag Sale Price and on the other terms stated in the Drag Notice.

13.4 Withdrawal of Drag Notice

A Drag Notice may be revoked by the Drag Seller at any time by written notice to the Company. The Company must notify each Shareholder promptly if any Drag Notice is validly withdrawn.

13.5 Dragged Shareholders liability

Dragged Shareholders can be required to give to the Drag Buyer representations, warranties and/or indemnities relating to the Company and its Business substantially equivalent to those given by the Drag Seller, provided that any liability for any such representations, warranties or indemnities given to the Drag Buyer in any documentation to effect the sale is allocated between the Drag Seller and the Dragged Shareholders in proportion to the amount of consideration payable for the relevant Equity Securities sold to the Drag Buyer.

14. Tag rights

14.1 When tag rights apply

If one or more holders of Equity Securities intends to sell Equity Securities which represent 50% or more of the Equity Securities on a Fully Diluted Basis ("**Tag Sellers**") to a person ("**Tag Buyer**") then, subject to clause 14.2 ("**Exceptions**"), the Tag Seller must give a notice ("**Invitation to Tag**") to each Ordinary Shareholder ("**Tag Shareholder**") with a copy to the Company.

14.2 Exceptions

An Invitation to Tag is not required where the proposed sale by the Tag Seller is a Permitted Transfer.

14.3 Contents of Invitation to Tag

An Invitation to Tag must state:

- (a) (**Tag Seller**) the identity of the Tag Seller;
- (b) (**Tag Buyer**) the identity of the Tag Buyer;
- (c) (**Equity Securities being sold**) the number and class of Equity Securities proposed to be sold by the Tag Seller;
- (d) (**Tag Proportion**) the percentage of the total number of Equity Securities held by the Tag Seller proposed to be sold ("**Tag Proportion**");
- (e) (**sale price**) for each class of Equity Securities proposed to be sold, the cash sale price for each Equity Security ("**Tag Sale Price**") and any other terms of the proposed sale by the Tag Seller to the Tag Buyer;
- (f) (**Tag Option**) that each Tag Shareholder has an option ("**Tag Option**") to direct the Tag Seller to include in the sale to the Tag Buyer, the Tag Proportion of each class of the Tag Shareholder's Equity Securities ("**Tag Securities**"), at the Tag Sale Price and on the other terms set out in the Invitation to Tag, which terms must be no less favourable to the Tag

Shareholder than the terms on which the Tag Seller is proposing to sell its Equity Securities to the Tag Buyer;

- (g) (**exercise period**) the period during which the Tag Option may be exercised which, unless otherwise agreed in writing between the Tag Seller and the Company (with Investor Director Approval), must not be less than 10 Business Days from the date of the Invitation to Tag; and
- (h) (**completion date**) the Tag Seller's reasonable best estimate of the date for completion of the sale to the Tag Buyer if the Tag Option exercised, which unless otherwise agreed in writing between the Tag Seller, the Tag Buyer and the Company (with Investor Director Approval), must not be less than 10 Business Days after the last date for exercise of the Tag Option.

14.4 Exercise of a Tag Option

A Tag Option may be exercised by notice in writing to the Tag Seller with a copy to the Company within the exercise period stated in the Invitation to Tag. Any exercise of a Tag Option must be for all Tag Securities of the relevant Tag Shareholder and is irrevocable, unless otherwise agreed in writing between the Tag Seller and the relevant Tag Shareholder.

14.5 Effect of exercise of Tag Option

If a Tag Shareholder exercises its Tag Option:

- (a) the Tag Shareholder must sell its Tag Securities to the Tag Buyer on the terms stated in the Invitation to Tag; and
- (b) the Tag Seller must not complete the proposed sale to the Tag Buyer unless at the same time the Tag Buyer buys the Tag Securities of each Tag Shareholder for which a valid notice of exercise has been given by the Tag Shareholder under clause 14.4 at the Tag Sale Price and on the other terms specified in the Invitation to Tag.

14.6 Tag Shareholders liability

Tag Shareholders can be required to give to the Tag Buyer representations, warranties and/or indemnities (limited to title and capacity regarding the Tag Securities) relating to the Company and its Business substantially equivalent to those given by the Tag Seller, provided that any liability for any such representations, warranties or indemnities given to the Tag Buyer in any documentation to effect the sale is allocated between the Tag Seller and the Tag Shareholders which accept the Tag Option severally and in proportion to the amount of consideration payable for the relevant Equity Securities sold to the Tag Buyer.

15. Completion of Equity Security sales

15.1 Application of this clause

This clause 15 applies to any sale or disposal of Equity Securities by a Shareholder to any person (other than the Company) required or contemplated under clauses 12 to 15, except to the extent otherwise authorised in writing by the Company.

15.2 Consent to transfer

Each Shareholder consents to the completion of a sale or disposal of Equity Securities to which this clause 15 applies in the manner contemplated by this clause.

15.3 Company agent to effect sale or disposal

Each Shareholder irrevocably appoints the Company to be its agent to sign all documents and do such things as are necessary to effect the sale or disposal of such Equity Securities to which this clause 15 applies in the manner contemplated by this clause.

15.4 Completion obligations

At the time for completion of a sale or disposal of Equity Securities to which this clause 15 applies:

- (a) the Seller authorises the Company to give to the Purchaser:
 - i. a transfer form in favour of the Purchaser (or its nominated buyer) of all Equity Securities to be sold, duly executed by the Seller or the Company as agent on behalf of the Seller ("**Appointment**"); and
 - ii. certificates for those Equity Securities (as applicable) or a statutory declaration in a form approved by the Company in the case of a lost certificate; and
- (b) the Purchaser must, unless otherwise specified in this constitution, pay the Seller the relevant purchase price in immediately available funds.

15.5 Company agent to receive consideration

Each Shareholder irrevocably appoints the Company to be its agent to receive the purchase price from the Purchaser under clause 15.4.

15.6 Company must account

When the Company receives the purchase price it must account to the Seller for the purchase price as soon as reasonably practicable.

15.7 No challenge

No Shareholder may bring a claim against the Company for, and must hold the Company harmless from, any loss or liability arising from the proper performance by the Company of its powers as agent in accordance with this clause 15.

16. Exit

16.1 Exit Event

- (a) If the Board gives notice to the Shareholders of its intention to approve or undertake an Exit Event ("**Exit Event Notice**") then (subject to obtaining the necessary consents or approvals contemplated in this constitution and provided that where the Exit Event involves the sale of Shares, all Shares of the same class are to be sold on the same material terms, including as to price):
 - i. each Shareholder must use their best endeavours to procure that all steps are taken as are reasonably required (including any specific steps set out in the Exit Event Notice or any other steps notified) by the Board to give effect to such Exit Event including waiving any rights of pre-emption a party may have; and
 - ii. the Board must promptly determine and notify each Shareholder of the amount distributable upon each Equity Security in accordance with the Constitution;
- (b) in the case of an Asset Sale effected by way of a sale of the assets of any Subsidiary, the Company shall, in its capacity as shareholder of the relevant Subsidiary, take all necessary action to pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the proceeds of such sale to the Company;

- (c) in the case of an Asset Sale, the Shareholders must (unless the Board resolves otherwise):
 - i. pass a Special Resolution at short notice to reduce the capital of the Company or to otherwise return all surplus capital to holders of Equity Securities; and/or
 - ii. pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the proceeds of sale or licence (as applicable) to holders of Equity Securities, (but not a resolution in respect of the winding-up of the Company) so that the proceeds of sale may be distributed to holders of Equity Securities in their Respective Proportion;
- (d) in the case of a Change in Control Share Sale or IPO, the Shareholders and the Company must procure that the transaction documents entered into with the buyer(s) provide that the total proceeds to be paid to any and all holders of Equity Securities as consideration for their Equity Securities under the Change in Control Share Sale or IPO will be apportioned between those holders of Equity Securities in their Respective Proportion; and
- (e) if the Company becomes Insolvent, the Company must (unless the Board resolves otherwise) first be deregistered under the Act and the Shareholders must pass any Special Resolution or other resolution or resolutions to facilitate the distribution of the assets of the Company to the holders of Equity Securities in their Respective Proportion.

17. Default

17.1 Defaulting Shareholder

An Event of Default occurs and a Shareholder becomes a Defaulting Shareholder if it or any Affiliate of it that is a Shareholder:

- (a) **(breach)** breaches any of its material obligations under this constitution or terms of issue or other applicable constitutional document for a class of Equity Securities and the Company provides written notice to the Defaulting Shareholder of the breach and after 30 days from the date of the notice:
 - i. the breach remains unremedied (where the breach can be remedied); or
 - ii. compensation is not paid by the Shareholder to the Company or the other Shareholders by way of damages (in an amount agreed in writing between the Company and the Defaulting Shareholder) where the breach cannot be remedied;
- (b) **(repeated breach)** breaches any of its material obligations under this constitution within six months of a breach for which a written notice was issued by the Company, whether or not that breach is capable of remedy;
- (c) **(law)** is prohibited from being a Shareholder by any law;
- (d) **(insolvency)** becomes Insolvent;
- (e) **(Transfer of Equity Securities)** transfers or purports to transfer any of its Equity Securities in breach of this constitution;
- (f) **(change in control)** where it is a Shareholder other than an Investor who undergoes a change in Control, without the prior written consent of the Board;

- (g) **(equity funding)** fails to pay when due any amount payable to the Company for the issue of Equity Securities to such Shareholder; and the Board gives notice to the Shareholder stating that it is a Defaulting Shareholder and the basis on which that conclusion has been reached.

17.2 Consequences of an Event of Default

- (a) If an Event of Default occurs, the rights in clauses 17.3 to 17.5 inclusive are without prejudice to any other rights any other person, including the Company, may have.
- (b) If an Event of Default occurs in respect of a Shareholder, the Defaulting Shareholder must promptly notify the Company of that Event of Default (unless the Company is already aware of the occurrence of the Event of Default).

17.3 Suspension of rights

With effect from the date that it becomes a Defaulting Shareholder under clause 17.1 (“Defaulting Shareholder”):

- (a) the Defaulting Shareholder’s voting rights attached to its Shares and rights under this constitution are suspended; and
- (b) any Director appointed by the Defaulting Shareholder will be deemed to have resigned and any Director appointment rights of the Defaulting Shareholder are suspended.

17.4 Period of suspension

Each suspension under clause 17.3 (“**Suspension of rights**”) continues for any Equity Securities held by the Defaulting Shareholder:

- (a) until the Event of Default has been remedied to the satisfaction of the Board;
- (b) for a Default Sale Security, until completion of the sale or disposal of the Default Sale Security; or
- (c) for an Equity Security permitted to be retained, until the date of the Default Notice stating the Defaulting Shareholder may retain that Equity Security.

17.5 Obligations continue to apply

The Defaulting Shareholder’s obligations under this constitution continue to apply during the period of any suspension of rights under clause 17.3.

17.6 Mandatory sale

- (a) If an Event of Default occurs, the Defaulting Shareholder is required to sell or dispose of any or all of the Equity Securities held by the Defaulting Shareholder (the Equity Securities required to be sold or disposed of being “Default Sale Securities”) to the Company by way of a purchase, buy-back, cancellation as part of a reduction of capital or redemption of the relevant Equity Security if determined by the Board.
- (b) The Company must notify the Defaulting Shareholder promptly of any such determination under clause 17.6(a) (such notification being a “**Default Notice**”).

17.7 Default Notice

The Default Notice must specify for each Default Sale Security:

- (a) **(sale Particulars)** if the sale or disposal is to be to the Company (and if so, the method of disposal);
- (b) **(sale price basis)** that the sale price payable for the Default Sale Security will be:

- i. for an Ordinary Share, an amount equal to the fair market value of the Ordinary Share less 30%; and
 - ii. for any other class of Share, an amount determined by the Board; except that the above discounts do not apply to the extent that the Shareholder is a Defaulting Shareholder due to death or incapacity;
- (c) **(terms and conditions)** any conditions and other terms of the sale or disposal required by the Board;
 - (d) **(completion date)** the Company's reasonable best estimate of the date for completion of the sale or disposal which, unless otherwise agreed between the Board and the Defaulting Shareholder, must be not less than 5 Business Days after the date the sale price for all Default Sale Securities has been agreed or determined (if applicable);
 - (e) **(sale documents)** the principal documents required to be signed by the Defaulting Shareholder to give effect to the sale or disposal of the Default Sale Security, copies of which must accompany the Default Notice; and
 - (f) **(other arrangements)** such other arrangements as the Board reasonably requires to give effect to the sale or disposal of the Default Sale Security.

17.8 Completion of mandatory sale

Completion of the sale or disposal of the Default Sale Securities must occur on a date determined by the Board which must be:

- (a) not more than 90 days after the sale price for all Default Sale Securities has been agreed or determined (if applicable); and
- (b) not less than 5 Business Days after notice of the completion date is given to the Defaulting Shareholder.

17.9 Payment method for sale price

The sale price for a Default Sale Security is payable in cash.

17.10 Company acquisition of Default Sale Security

If the Company is to acquire a Default Sale Security all parties must, on written request from the Company, take all reasonable steps:

- (a) where the Default Sale Security is a Share, to comply with all requirements under the Act to authorise the implementation of the buy-back, cancellation as part of a reduction of capital or redemption of the relevant Share (including convening a general meeting of the Company and/or a meeting of holders of any class of Shares on short notice to authorise the Company to effect the buy-back or reduction of capital or the passing of a written resolution of Shareholders and/or holders of any class of Shares to the same effect); and
- (b) to seek and obtain any necessary third party consents.

18. Dividends and capital reserves

18.1 Payment of dividend

Subject to the Act, this constitution and the terms on which Shares are on issue, the Board may determine that a dividend is or will be payable.

18.2 Interest not payable

Interest is not payable on a dividend.

18.3 Entitlement to receive dividends

A dividend in respect of a share must be paid to the person who is entitled to have his or her name entered in the Register of Shareholders as the holder of that share on the date the dividend is declared by the Board.

18.4 Dividends proportional to paid up capital

- (a) Subject to the Act, this constitution and any rights or restrictions attached to a class of shares, the person entitled to a dividend on a share is entitled to:
 - i. if the share is fully paid, the entire dividend; or
 - ii. if the share is partly paid, a proportion of that dividend equal to the proportion which the amount paid on that share is of the total amounts paid or payable on that share.
- (b) Amounts paid in advance of a call on a share are ignored when calculating the proportion under clause 18.4(a)(ii).

18.5 Deductions from dividends

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

18.6 Unclaimed dividends

The Board may invest unclaimed dividends as they think fit for the benefit of the Company until claimed or until required to be dealt with under any law relating to unclaimed money.

18.7 Dividend plans

- (a) The Board may establish a dividend selection plan or bonus share plan on any terms, under which participants may elect in respect of all or part of their shares:
 - i. to receive a dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or
 - ii. to forego a dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust.
- (b) The Board may establish a dividend reinvestment plan on any terms, under which participants may elect in respect of all or part of their shares to apply the whole or any part of a dividend from the Company in subscribing for securities of the Company or a related body corporate of the Company.
- (c) The Board may implement, amend, suspend or terminate a plan established under this clause 18.7.

18.8 Capitalisation of reserves and profits

The Board may:

- (a) resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Shareholders; and

- (b) resolve to apply the sum in any of the ways mentioned in clause 18.9 for the benefit of Shareholders in the proportions to which those Shareholders would have been entitled in a distribution of that sum by way of dividend.

18.9 Applying a sum for the benefit of Shareholders

The ways in which a sum may be applied for the benefit of Shareholders under clause 18.8 are:

- (a) in paying up any amounts unpaid on shares held by Shareholders;
- (b) in paying up in full unissued shares or debentures to be issued to Shareholders as fully paid; or
- (c) partly as mentioned in clause 18.9(a) and partly as mentioned in clause 18.9(b).

18.10 Implementing the resolution

The Board may do all things necessary to give effect to a resolution made under clause 18.8 and, in particular, to the extent necessary to adjust the rights of the Shareholders among themselves.

19. Company records and information

19.1 Registers

In accordance with the Act, the Board must cause the Company to keep and maintain:

- (a) the Register of Shareholders;
- (b) if the Company issues debentures, a register of the holders of those debentures;
- (c) a register of charges; and
- (d) any other registers required by the Act.

19.2 Financial records

- (a) The Board must cause written financial records to be kept to:
 - i. correctly record and explain the transactions and financial position and
 - ii. performance of the Company;
 - iii. enable true and fair financial statements to be prepared; and
 - iv. permit preparation of any other documents required by the Act or this constitution.
- (b) The financial records must be kept:
 - i. in a manner which will enable them to be conveniently and properly audited;
 - ii. for seven years after the completion of the transactions or operations to which they relate; and
 - iii. at the Registered Office or at any other place as the Board determines and at all times be open for inspection by the Directors.

19.3 Financial statements and reports

The Company is not required to prepare and cause copies of the Company's financial statements and other reports to be distributed to holders of its securities unless required by or under the Act.

19.4 Inspection and copying of registers

The Board must allow persons to inspect or copy the registers referred to in clause 19.1 as required by the Act.

19.5 Inspection of Company books

- (a) A request by a Shareholder to inspect the books of the Company, including its financial records, must be in writing and must be delivered to the Company at its Registered Office.
- (b) Subject to clause 19.5(c) and the Act, the Board may by Special Resolution decide whether and to what extent and at what times and places and under what conditions a Shareholder may inspect the books of the Company, including its financial records.
- (c) If a Shareholder holds 15% or more of the total issued Shares, then that Shareholder may request access to the Company's financial statements and other reports, provided that the Shareholder's request is made in good faith and that the Shareholder acknowledges that all information provided is Confidential Information subject to clause 25.
- (d) This clause does not alter the rights of a Director, former Director or Shareholders to inspect the books of the Company under the Act.

19.6 Audit

The financial statements of the Company for each financial year need not be audited unless required by or under the Act.

19.7 Periodic reports

The Company must give access to the following information about the Business and the operations of the Company (including the following reports) to the Shareholders named below:

- (a) **financial statements:** within 10 weeks of the end of each Financial Year, the Company will give Artesian a profit and loss statement and balance sheet for that Financial Year, such financial statements to be audited if required under applicable law;
- (b) **questionnaire:** a quarterly questionnaire provided by Artesian confirming compliance with the Early Stage Venture Capital Limited Partnerships start up requirements within 6 weeks after the end of each Financial Year; and
- (c) **further information:** any information reasonably requested by Artesian, so long as Artesian continues to hold Shares in the Company.

19.8 Financial statements and other information

The Company must provide any information reasonably requested by a Shareholder to enable the Shareholder to provide a Government Agency with information required by that Government Agency.

20. Founder Vesting

20.1 Vesting of Founder Shares

Shares held by each Founder or Founder Entity (as applicable) will vest as follows:

- (a) 50% will vest on the Vesting Commencement Date;
- (b) 10% will vest on the date that is 6 months after the Vesting Commencement Date;
- (c) 10% will vest on the date that is 12 months after the Vesting Commencement Date;
- (d) 10% will vest on the date that is 18 months after the Vesting Commencement Date;
- (e) 10% will vest on the date that is 24 months after the Vesting Commencement Date; and
- (f) the balance will vest on the date that is 30 months after the Vesting Commencement Date;

provided that the relevant Founder remains engaged by the Company to provide services, whether as a contractor or employee at the date of vesting.

20.2 Vesting Commencement Date

For the purpose of this clause 20, the Vesting Commencement Date is 17 September 2019.

20.3 Immediate vesting of Founder Shares

Notwithstanding clause 20.1, the Shares held by a Founder or Founder Entity (as applicable) will immediately vest:

- (a) as part of a trade sale of the Company which is approved by the Board; or
- (b) as a result of a tag along right being exercised by the Shareholders pursuant to clause 14 or a drag along right being exercised by another Shareholder pursuant to clause 13; or
- (c) as a result of the allotment or transfer of shares under an IPO of the Company; or
- (d) if the Founder is a Good Leaver.

20.4 Voting Unvested Shares

For the avoidance of doubt, subject to clause 21.5, each Founder will be deemed to own all 100% of all Unvested Shares for all purposes of this agreement (including voting rights), and they shall be entitled to vote 100% of the Unvested Shares and Vested Shares that they hold, provided that they are not a Bad Leaver.

20.5 Restriction on transfers

- (a) A Founder or Founder Entity (as applicable) must not, without first obtaining the prior written consent of at least one Investor, sell or transfer its Shares to any person (other than an Affiliate, provided that that Affiliate complies with this clause 20.5) for a period of 3 years from the Vesting Commencement Date.
- (b) Clause 20.5(a) will not apply to any sale or transfer of Shares by a Founder or Founder Entity (as applicable) which is made:
 - i. as part of a trade sale of the Company which is approved by at least one Investor; or
 - ii. as a result of a tag along right being exercised by the Shareholders pursuant to clause 14 or a drag along right being exercised by another Shareholder pursuant to clause 13; or
 - iii. as a result of the allotment or transfer of shares under an IPO of the Company or Related Body Corporate.

21. Bad Leaver Arrangements

21.1 Unvested Shares

- (a) If a Founder (or their Founder Entity as the case may be) is a Bad Leaver within 3 years of the Vesting Commencement Date then the Company may, by written notice to the Founder or Founder Entity (as applicable), buy back all Unvested Shares from the Founder or Founder Entity (as applicable) for a price equal to \$1.00 in total, and the Founder and Founder Entity (if applicable) must do everything necessary to facilitate the sale of the Unvested Shares to the Company within 5 Business Days of the Company's notice.
- (b) Where a Founder is a Good Leaver, clause 21.1(a) does not apply.

- (c) Despite clause 21.1(a) the Company may only buy back the Unvested Shares if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors

21.2 Vested Shares

- (a) In consideration of the payment of \$1 by the Company to each Founder Entity, then each Founder Entity agrees that if a Founder (or their Affiliate, as the case may be) is a Bad Leaver, the Company may by written notice, buy back the Vested Shares held by the Founder or Founder Entity, as applicable (**Default Shares**) from the Founder or Founder Entity (as applicable) or direct the Founder or Founder Entity (as applicable) to transfer to a person nominated by the Board all of the Default Shares at the price set out in clause 21.3 (**Default Notice**).
- (b) If the Company notifies the Founder or Founder Entity (as applicable) that it wishes to buy back or require a compulsory transfer of the Default Shares under clause 21.2(a) the Founder or Founder Entity (as applicable) and the other Shareholders must do everything necessary to facilitate the sale of the Default Shares to the Company or the Company's nominee within 10 Business Days of the Company's notice.
- (c) Despite clauses clause 21.2(a) and clause 21.2(b) the Company may only buy back the Default Shares if that is permitted under Part 2J.1 of the Corporations Act and, for the avoidance of doubt, if the buyback will not materially prejudice the Company's ability to pay its creditors.

21.3 Price for Default Shares

The price for the Default Shares (**Default Price**) is 70% of Fair Market Value.

21.4 Other remedies

The rights and remedies set out in this clause do not exclude any other rights or remedies that a party may have against a party in default of this agreement.

21.5 Suspension

To the extent that the Law allows, from the time of giving notice under clause 21.2:

- (a) Subject to clause 21.5(b) the Founder or Founder Entity (as applicable) and any person appointed as a Director by that party is deemed to have provided a resignation notice to the Company at the same time as a Founder or Founder Entity (as applicable) is notified pursuant to clause 21.2 and is automatically removed from the Board at that time, and has no further right to participate in the Business or management of the Company; and
- (b) if the operation of clause 21.5 (a) would result in the Company having zero Directors, the Director who would have been removed from the Board in accordance with clause 21.5 (a) shall remain a Director of the Company on an interim basis until a replacement Director is appointed.
- (c) the rights of the relevant Founder or Founder Entity (as applicable) as a holder of Securities (including dividend and distribution rights in relation to Securities, and the rights to attend and vote at general meetings of Shareholders and to receive information and

documents) are suspended until those Securities have been acquired by the Company or as directed by the Company.

21.6 Fair Market Value

The Board must by Special Resolution and with the approval of at least one Investor, appoint an Independent Expert to determine the Fair Market Value.

22. Service of documents

22.1 Document includes notice

In clauses 22.2 to 22.8, a reference to a document includes a notice.

22.2 Giving a document to Shareholders

- (a) Each Shareholder must nominate and maintain a current email address to receive any notices from the Company. Each Shareholder acknowledges that email is the Company's preferred method of notice.
- (b) The Company may give a document to a Shareholder:
 - i. in person;
 - ii. by sending it by post to the address of the Shareholder in the Register of Shareholders or the alternative address (if any) nominated by that Shareholder;
 - iii. by sending it via email or other electronic means to the electronic address nominated by that Shareholder;
 - iv. by making it available via the Company's shareholder management portal;
 - v. by any other means agreed between the Company and that person; or
 - vi. by notifying the Shareholder under section 249J(3A) of the Act.
- (c) If the address of a Shareholder in the Register of Shareholders is not within Australia, the Company must send all documents to that Shareholder by airmail, air courier, by fax, or by other electronic means nominated by the Shareholder.
- (d) The Company must give any document to Shareholders who are joint holders of a share to the person named first in the Register of Shareholders in respect of that share, and that document is deemed received by all holders of that share.

22.3 Giving a document to a person entitled to shares

A person who by operation of law, transfer or other means becomes entitled to any share is absolutely bound by every document given under clause 22.2 to the person from whom that person derives title prior to registration of that person's title in the Register of Shareholders.

22.4 Evidence of service of a document on a Shareholder

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

22.5 Giving a document to a Director

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the email or electronic address nominated by that person; or
- (d) by any other means agreed between the Company and that person.

22.6 Giving a document to the Company

A person may give a document to the Company:

- (a) by leaving it with a representative of the Company at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (d) by any other means prescribed by the Act.

22.7 Time of service of a document

- (a) A document sent by post to an address within Australia is taken to be given:
 - i. in the case of a notice of meeting, one Business Day after it is posted; or
 - ii. in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
 - i. in the case of a notice of meeting, five Business Days after it is posted; or
 - ii. in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (d) A document sent by electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the electronic address.
- (e) A document given to a Shareholder under clauses 22.2(a)(iv) and (v) is taken to be given on the day on which the Shareholder is notified that the document is available.

22.8 Signatures

Where, by a provision of this constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Board.

23. Payments

23.1 Form of payments

The Company may pay a person entitled to an amount payable in respect of a share (including a dividend) by:

- (a) crediting an account nominated in writing by that person;
- (b) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (c) any other manner as the Board resolves.

23.2 Payment by cheque

The Company may post a cheque referred to in clause 23.1(b) to:

- (a) the address in the Register of Shareholders of the Shareholder in respect of the share;
- (b) if that share is jointly held, the address in the Register of Shareholders of the Shareholder named first in respect of the share; or

(c) any other address which that person directs in writing.

23.3 Receipt

Any joint holder of a share may give effective receipt for an amount (including a dividend) paid in respect of the share.

24. Proceedings involving Officers

24.1 Company may indemnify Officers

Subject to clause 24.2, the Board may determine that the Company indemnify any Officers:

- (a) for any liability (other than for legal costs dealt with in paragraph (b)) incurred by the Officer in the Officer's capacity as an officer of the Company; and
- (b) for legal costs incurred by the Officer in defending an action for a liability incurred by the Officer in the Officer's capacity as an officer of the Company.

24.2 Indemnity prohibited in certain circumstances

The indemnity in clause 24.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

24.3 Company may make an advance

Subject to clauses 24.2 and 24.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment and may be on whatever terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 24.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Officer.

24.4 Repayment of advance in certain circumstances

An Officer must repay amounts paid by the Company under clause 24.3 to, or on behalf of, the Officer in relation to a liability incurred by Officer in the Officer's capacity as an officer of the Company if:

- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 24.1;
- (b) a court determines that the Officer is not entitled to be indemnified by the Company for that liability; or
- (c) the liability is covered by insurance and the Officer receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

24.5 Company may pay insurance premium

Subject to clause 24.6, the Board may determine that the Company pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Officer against liability incurred by the Officer in the Officer's capacity as an officer of the Company, including a liability for legal costs.

24.6 Payment of premium prohibited in certain circumstances

The Company must not pay or agree to pay a premium under clause 24.5 where:

- (a) the Company is prohibited by the Act or any other statute from paying or agreeing to pay such a premium; or

- (b) the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

25. Confidential Information

25.1 Disclosure of Confidential Information

Each Shareholder must keep the Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:

- (a) **(Company consent)** with the prior written consent of the Company;
- (b) **(Affiliate)** to an Affiliate of that Shareholder who has a need to know the relevant Confidential Information;
- (c) **(required by law)** if the Shareholder is required to do so by law, a Government Agency or a stock exchange;
- (d) **(financier or advisor)** by a Shareholder to an existing or potential financier or advisor to the Company or the Shareholder on a confidential basis;
- (e) **(Unrelated Buyer)** by a Shareholder to any Unrelated Buyer of Equity Securities on a confidential basis, including in connection with an Exit Event; and
- (f) **(in public domain)** to the extent that the Confidential Information is in the public domain (or subsequently becomes within the public domain other than by a breach of this clause 25 or other obligation or duty of confidence by any person).

25.2 Disclosure by recipient of Confidential Information

Any Shareholder disclosing information under clause must use all reasonable endeavours to ensure any person receiving Confidential Information from it (including that person's Affiliates) keeps the information confidential, consistent with that party's confidentiality obligations in this clause 25.

25.3 Use of Confidential Information

Other than as contemplated under clause 25.1, each Shareholder must use the Confidential Information only for the purposes of:

- (a) monitoring and making decisions regarding its investment in the Company; and
- (b) exercising its rights or performing its obligations under or in connection with this constitution.

25.4 Excluded Information

Clauses 25.1 to 25.3 ("Use of Confidential Information") inclusive do not apply to Excluded Information.

25.5 Prior notification of disclosure

A party (other than the Company) requiring or wishing to disclose Confidential Information in accordance with clause 25.1(c) must notify the Company of the proposed disclosure as far in advance as practicable and consult with the Company as to the content of any such disclosure as far as reasonably possible.

25.6 Announcements or releases

- (a) A Shareholder must not make press or other announcements or releases with respect to the Company or the Business without the prior approval of the Board and other Shareholders (if any) disclosed in the announcement to the form and manner of the

announcement or release unless and to the extent that disclosure is required to be made by that Shareholder by law to a Government Agency or a stock exchange.

- (b) The disclosing party must, as far as reasonably possible, consult with the Company as to the content of any such announcement or release.

25.7 Obligations continue

To the extent permitted by law, the rights and obligations of a Shareholder under this clause 25 with respect to confidentiality continue to apply to that Shareholder even after that person ceases to be a Shareholder.

26. Winding Up

26.1 Rights of Shareholders on winding up

Subject to this constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Shareholders is more than sufficient to pay:
 - i. all the debts and liabilities of the Company; and
 - ii. the costs, charges and expenses of the winding up, the excess must be divided among the Shareholders in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in clause 26.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 26.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under clause 26.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

26.2 Division of assets

- (a) If the Company is wound up, the liquidator, with the sanction of a Special Resolution of the Shareholders:
 - i. may divide among the Shareholders, in specie or in kind, the whole or any part of property of the Company available for distribution and may, for that purpose, set the value as the liquidator considers fair on any specific assets of the Company to be divided; or
 - ii. may vest specific assets of the Company in a trustee or trustees on trust for the benefit of any of the Shareholders as the liquidator thinks fit but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If the liquidator thinks fit, any division under clause 24.2(a) may be otherwise than in accordance with the legal rights of the Shareholders and any class may be given preferential or special rights or may be excluded altogether or in part.

- (c) Where a division under clause 26.2(a) is otherwise than in accordance with the legal rights of the Shareholders, a Shareholder is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If a division under clause 26.2(a) involves securities that have a liability to a call, a Shareholder entitled under the division to any such securities may, by written notice not more than 10 days after the passing of the special resolution referred to in clause 26.2(a), direct the liquidator to satisfy the call out of the proportion of securities due to the Shareholder and to pay any balance to the Shareholder.
- (e) Nothing in this clause 26.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.

27. Variation

Without derogating from the rights of Shareholders under clause 12.7, this constitution may only be varied, modified or replaced in accordance with:

- (a) a Special Resolution passed by the Shareholders; and
 - (b) a Special Resolution passed by the Board;
- to approve such variation, modification or replacement.

Schedule 1 – Major Business Matters – Board decisions

Matters to be determined by a Special Resolution of the Board are:

- (a) **(business plan)** adopt a business plan for the Company and vary that business plan;
- (b) **(employees)** appoint or remove or materially change the terms of engagement of the Founder and key executives or any other employee with a total remuneration package in excess of \$100,000 per annum, or pay any such person a bonus;
- (c) **(Board composition)** appoint a director or otherwise alter the structure of the Board other than in accordance with this agreement;
- (d) **(accounts)** the approval of the monthly and annual statutory accounts of the Company;
- (e) **(accounting practices)** any change to the accounting practices and policies of the Company;
- (f) **(change of business)** make a material change in the nature of the Company's business;
- (g) **(capital expenditure)** incur capital expenditure of more than \$200,000 in a financial year that is not set out in the approved business plan or budget;
- (h) **(Insurance)** enter into any D&O insurance policy for the board and the Company's senior executives;
- (i) **(Share Plan)** adopt or vary the terms of any Share Plan;
- (j) **(issuing Securities)** issue of Securities, other than an Excluded Issue;
- (k) **(new class of Securities)** create any class of Securities with rights that are superior to the rights of the Ordinary Shares;
- (l) **(dividends)** declare, make or pay a dividend;
- (m) **(administration)** appoint an external administrator, liquidator or receiver;
- (n) **(partnership)** enter into (or terminate) any material partnership, joint venture, profit-sharing agreement, technology licence or collaboration;
- (o) **(financial indebtedness)** incur any financial indebtedness by the Company which exceeds \$100,000 (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); and
- (p) **(encumbrances)** grant any Security Interest of any nature in respect of all or any material part of the Company's undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party.

Schedule 2 – Major Business Matters – Shareholder decisions

Matters to be determined by a Special Resolution of the Shareholders having the right to vote on the resolution, including the affirmative vote of at least one Investor, are:

- (a) **(Share rights)** varying the rights of any Shares;
- (b) **(Constitution)** amending this constitution;
- (c) **(Intellectual Property)**
 - i. the sale, assignment, transfer, disposal or licence of, or the creation of any other rights in favour of a third party with respect to, any Intellectual Property Rights of the Company or any of its Subsidiaries (other than licensing in the ordinary course of business); or
 - ii. entry into an agreement or transaction to do any of the actions in (i) of this subsection (c);
- (d) **(restructure)** any restructuring involving the Company including the creation of a trust, trustee, Subsidiary or new branch of the Company (including in a jurisdiction other than Australia);
- (e) **(Share Plan)** increasing the available shares under the Share Plan such that the total number of shares to be issued under the Share Plan is greater than 10% of the fully diluted share capital of the Company as at the date of this agreement;
- (f) **(sale)** a sale of all or a majority of the assets of the Company; and
- (g) **(related party transactions)** other than as permitted by this constitution, transactions between the Company and a Shareholder or its Affiliate which are outside of the ordinary course of business, otherwise than on arm's length terms.