

# Constitution

## Lilly's Little Lunchbox Pty Ltd

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In the interpretation of this Constitution, unless the context or subject matter requires otherwise, references to:

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

**ASIC** means the Australian Securities and Investments Commission;

**Associate** when used in Rule [35](#), has the meaning given for the purposes of Division 7A of the *Income Tax Assessment Act 1936 (Cth)*;

**Call Notice** means a notice given under Rule [14.1\(b\)](#);

**Company** means the Company whose Members have adopted this Constitution; **Constitution** means this Constitution containing the rules for the operation of the Company;

**CSF Offer** means the crowd-sourced funding document dated 23 May 2023, Subscription Agreement and any subsequent offers made under Part 6D.3A of the Act;

**Director** means each person appointed as a director of the Company and:

- (a) includes any person appointed as an alternate for another Director while that person is acting as a Director; and
- (b) excludes any person who is removed or resigns from that office;

**Div 7A** means Division 7A of the *Income Tax Assessment Act 1936 (Cth)*;

**Equity Securities** means shares or any instrument convertible into shares, including options, warrants, and convertible notes;

**Exit Event** means any event that results in a change of control, including initial public offering, share sale, asset sale, or any other event that the Directors determines;

**Exit Proposal** means a proposal to commence an Exit Event;

**Interest Rate** means the Benchmark Interest Rate defined in the *Income Tax Assessment Act 1936 (Cth)* expressed as a rate per cent per annum;

**Member** means each person holding a share or shares in the Company at a relevant time;

**Notice Address** means and includes:

- (c) each address listed for each relevant person in the records of ASIC;
- (d) any other address nominated by the relevant person as a Notice Address; and
- (e) the then current facsimile number or email address of a person;

**Prescribed Rate** means the rate specified by the Directors from time to time expressed as a rate per cent per annum or if no rate is specified, the Interest Rate plus 2 per cent;

**Related Body Corporate** means:

- (f) in the case of a body corporate, another body corporate which is related to that body corporate within the meaning of the Act; and/or
- (g) in the case of a transfer by an individual Member under Rule [20](#), a body corporate in which that Member beneficially owns or controls all of the issued shares;

**Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, entitlement, discretion or cause of action;

**Rules** means the provisions of this Constitution and **Rule** means any of them;

**Subscription Agreement** means an executed agreement between the Company and a Member to subscribe for shares as provided on a crowdsourced funding platform or as provided in the annexures to a crowd-sourced funding document;

**Substantial Shareholder** means a Member with an equity proportion of 15% or more;

**Substantial Shareholder Majority** means at least 50% Substantial Shareholders;

**Secretary** means each person appointed as a secretary of the Company and excludes any person who is removed or resigns from that office;

**Unpaid Amount** means in relation to a share in the Company:

- (h) any amount due and unpaid in respect of the share;
- (i) any amount which remains outstanding under loans made by the Company to enable a person to acquire the share under an employee incentive scheme, to the extent permitted by the Act;
- (j) all amounts that the Company has paid in respect of the share and that have not been repaid by the relevant Member;
- (k) all interest and expenses due and payable to the Company in respect of any unpaid amounts; and
- (l) all money presently payable by the relevant Member to the Company.

## 1.2 Interpretation

- (a) In the interpretation of this Constitution, unless the context or subject matter requires otherwise, references to:
  - (i) singular words include the plural and vice versa;
  - (ii) any gender include every gender;
  - (iii) persons include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, charities, associations, partnerships, government authorities, and other legal entities. It will include references to that person's estate, personal representatives, executors, administrators, substitutes, successors and assigns;
  - (iv) writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) signature and/or signing mean due execution of a document and include signing by an agent or attorney or representative;
  - (vi) months mean calendar months;
  - (vii) statutes include statutes amending, modifying, rewriting, re-enacting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) sections of statutes or terms defined in statutes are to corresponding sections or defined terms in amended, consolidated or replacement statutes;

- (ix) an agreement or document (including this Constitution) mean that agreement or document as varied, amended, novated or supplemented and include all recitals, schedules, appendices and exhibits to it;
  - (x) Rules or schedules are to the Rules or schedules of this Constitution;
  - (xi) a party include that party's executors, administrators, substitutes, successors and assigns;
  - (xii) sell or sold include transfer, lease, assign, grant options and/or any other form of disposing of or creating an interest in the thing being considered and buy or purchase will be interpreted correspondingly.
- (b) (b) The following rules apply, unless the context or subject matter requires otherwise:
- (i) headings and the table of contents are used for convenience only and must be disregarded in the interpretation of this Constitution;
  - (ii) if a word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) each paragraph or sub-paragraph in a list is to be read independently from the others in the list.

### **1.3 Actions authorised under the Act**

Where the Act authorises or permits a company to do any thing if authorised by its constitution, the Company is authorised or permitted by this Constitution to do that thing subject to any express limitation contained in this Constitution.

### **1.4 Corporations Act prevails**

Where any provision in this Constitution conflicts with or is inconsistent with any provision of the Act, that provision will be read and interpreted as being subject to the provisions of the Act and will be ineffective, to the extent of any conflict or inconsistency.

### **1.5 Invalidity**

This Constitution will, to the extent possible, be interpreted and construed so as valid, legal and enforceable in all respects. If a provision, on its true interpretation or construction is found to be illegal, invalid or unenforceable:

- (a) that provision will, be read down to the necessary extent to ensure that it is not illegal, invalid or unenforceable and to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Constitution will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

### **1.6 No limit on powers**

Where the Company or the Directors or any other person is given a Right under this Constitution:

- (a) the Right is exercisable absolutely and with unfettered discretion and without restriction unless the Right is expressly limited;
- (b) any exercise of that Right on any occasion will not restrict the further exercise of the Right on any other occasion or at any time; and
- (c) this Rule 1.6 applies, subject to any provision of this Constitution, the Act or any other law, to the contrary.

## **1.7 Effect on the Constitution**

This Constitution has effect as a contract:

- (a) between the Company and each Member; and
- (b) between the Company and each Director and Secretary; and
- (c) between each Member and each other Member,

pursuant to which the Company and each of those persons agrees to observe and perform the Rules so far as they apply to that person.

## **2. Superannuation Industry (Supervision) Act 1993**

If the Company acts solely as a trustee of a regulated superannuation fund within the meaning of Section 19 of the *Superannuation Industry (Supervision) Act 1993*, then regardless of any Rule in this Constitution to the contrary, the distribution of the Company's income or property among its members is strictly prohibited.

## **3. Operation for Single Director/Member**

### **3.1 Interpretation**

Where the Company has a sole Director and/or a sole Member:

- (a) any reference in this Constitution to more than one Director or Member is deemed to be a reference to one Director or Member as the case requires;
- (b) this Constitution will in all respects be interpreted or modified to give legal effect and validity to its terms with application to a single Director and/or a single Member.

### **3.2 Meetings of Directors and Resolutions**

Where the Company has a sole Director:

- (a) any provision of these Rules or the Act which requires a meeting of Directors, is deemed not to require a meeting of Directors;
- (b) any provisions of these Rules or the Act which requires a resolution to be passed, is deemed to require only that the sole Director signs a resolution to that effect.

### **3.3 Meetings of Members and Resolutions**

- (a) Where the Company has a sole Member (even if the Member holds different classes of shares):
  - (i) any provision of these Rules or the Act which requires a meeting of Members, is deemed not to require a meeting of Members;
  - (ii) any provisions of these Rules or the Act which requires a resolution to be passed, is deemed to require only that the sole Member signs a resolution to that effect.
- (b) Where the Company has more than one Member but has only one Member entitled to receive notice of and vote at a meeting:
  - (i) any provision of these Rules or the Act which requires a meeting of Members, is deemed not to require a meeting of Members;
  - (ii) any provisions of these Rules or the Act which requires a resolution to be passed, is deemed to require only that the Member entitled to receive notice of and vote at a meeting signs a resolution to that effect.

## **4. Rights, Powers and Privileges**

### **4.1 General powers**

The Company has:

- (a) the rights, powers and privileges of a natural person;
- (b) the rights, powers and privileges of a body corporate; and
- (c) the rights, powers and privileges specified in this Constitution and the Act.

### **4.2 Specific powers**

Without limiting Rule [4.1](#), the Company has the Right to:

- (a) issue and allot fully or partly paid shares;
- (b) issue debentures;
- (c) distribute Company property to its Members;
- (d) grant options over unissued shares;
- (e) give security by charging uncalled capital;
- (f) grant a fixed and/or circulating charge over Company property;
- (g) register the Company as a body corporate in any place outside Australia; and
- (h) do anything that it is authorised to do or permitted to do by law anywhere in the world.

### **4.3 Legal capacity**

The Company's legal capacity to do something is not affected by the fact the Company's interests are not, or would not be, served by doing it.

## **5. PROPRIETARY LIMITED COMPANY**

### **5.1 Limitations**

The Company is registered as a proprietary company limited by shares and:

- (a) the liability of Members is limited; and
- (b) the right to transfer shares in the Company is restricted by this Constitution.

### **5.2 Prohibitions**

The Company is prohibited from:

- (a) issuing any offer for the acquisition of any shares in, or debentures of, the Company;
- (b) issuing any invitation to subscribe for any shares in, or debentures of, the Company; and/or

issuing any offer to accept subscriptions for any shares in, or debentures of, the Company, except in compliance with the Act.

### **5.3 Maximum Members**

The number of Members of the Company must not exceed 50. When counting Members:

- (a) joint holders of shares will be counted as 1 person;
- (b) any holder of shares who is an employee of the Company or an employee of a subsidiary of the Company will not be counted; and
- (c) any holder of shares who was an employee of the Company or an employee of a subsidiary of the Company who was, during the term of that employment and has continued, uninterrupted, to hold shares, will not be counted.

## **6. SHARE CLASSES**

- (a) The Company may issue shares of any class and with any Rights as determined by the Directors.
- (b) For the avoidance of doubt, the Company may issue shares:
  - (i) in the classes and with the Rights attached to them in Rule [7](#) (with or without other Rights); and/or
  - (ii) in any other class or classes and with any other Rights attached to them as determined by the Directors from time to time.
- (c) The Company may issue shares by resolution of the Directors.
- (d) Shares may be issued with any preferred or other special Rights or restrictions relating to dividends, voting, return of or entitlement to capital or otherwise as the Directors determine.
- (e) The Company may issue shares which are redeemable.
- (f) Any issue of any shares will not affect any special Rights or restrictions previously given to or imposed on any existing shares or class of shares unless varied in accordance with Rule [9](#).
- (g) Any issue of shares will be subject to the Act.
- (h) Shares may not be on-sold within 12 months of being issued unless:
  - (i) the Member provides a prospectus or other disclosure document;
  - (ii) an exemption under section 708 of the Act applies; or
  - (iii) ASIC directs that the prospectus or other disclosure document is not required.

## **7. SHARE RIGHTS**

### **7.1 Ordinary shares and A Class/B Class shares**

Holders of Ordinary shares and A Class and B Class shares have:

- (a) the right to vote at all meetings of the Company;
- (b) the right to participate in any dividend payable on the class of shares held; and
- (c) the right to participate in any division or distribution of any surplus assets or profits of the Company equally with all other Members having similar rights.

### **7.2 Ordinary shares acquired by CSF Offer**

Without limiting Rule 7.1, the Holders of Ordinary shares who obtained shares by CSF Offer are subject to the terms included in the applicable CSF Offer.

### **7.3 C Class/D Class/E Class shares**

Holders of C Class, D Class and E Class shares have:

- (a) no right to vote at any meeting of the Company;
- (b) the right to participate in any dividend payable on the class of shares held; and
- (c) the right to participate in any division of any surplus assets or profits of the Company equally with all other Members having similar rights

#### **7.4 F Class Redeemable Preference shares**

- (a) Holders of F Class Redeemable Preference shares have:
  - (i) the right to vote at all meetings of the Company;
  - (ii) the right to participate in any dividend payable on the class of shares held; and
  - (iii) no right to participate in the division of any surplus assets or profits of the Company.
- (b) The Company may at any time redeem all or redeem any one or more F Class Redeemable Preference shares. If the Company elects to do so:
  - (i) the redemption may only be exercised by resolution of the Directors;
  - (ii) the Company will give the holder of the shares to be redeemed seven days written notice of the redemption;
  - (iii) the notice must be signed by a Director and will be delivered to the Notice Address for the holder of those shares with a payment for the amount paid up in respect of those shares; and
  - (iv) any redemption under this Rule will be effective immediately upon the expiry of seven days from the delivery or deemed delivery of the notice of redemption.

#### **7.5 G Class Redeemable Preference shares**

- (a) Holders of G Class Redeemable Preference shares have:
  - (i) no right to vote at any meeting of the Company;
  - (ii) the right to receive from the profits of the Company as a first charge a non-cumulative preferential dividend at the Prescribed Rate of the amount then paid up (and not previously redeemed) on the G Class Redeemable Preference shares held; and
  - (iii) no right to participate in the division of any surplus assets or profits of the Company.
- (b) The Company may at any time redeem all or redeem any one or more G Class Redeemable Preference shares. If the Company elects to do so:
  - (i) the redemption may only be exercised by resolution of the Directors;
  - (ii) the Company will give the holder of the shares to be redeemed seven days written notice of the redemption;
  - (iii) the notice must be signed by a Director and will be delivered to the Notice Address for the holder of those shares with a payment for the amount paid up in respect of those shares; and
  - (iv) any redemption under this Rule will be effective immediately upon the expiry of seven days from the delivery or deemed delivery of the notice of redemption.

## **7.6 H Class shares**

Holders of H Class shares have:

- (a) the right to vote at all meetings of the Company;
- (b) no right to receive any dividends; and
- (c) the right to participate in the division of any surplus assets or profits of the Company equally with all other Members having similar rights.

## **7.7 I Class/J Class/K Class shares**

- (a) Holders of I Class, J Class and K Class shares have no Rights unless the Directors declare that a holder of one or more of those classes have Rights. The Directors' declaration may relate only to a Right to receive dividends payable on the class of shares held. For the avoidance of doubt, in relation to holders of I Class, J Class and K Class shares the Directors may:
  - (i) not declare that holders of I Class, J Class and/or K Class shares have a Right to vote at any meeting of the Company;
  - (ii) declare that holders of I Class, J Class and/or K Class shares have a Right to receive any dividends payable on the class of shares held; and
  - (iii) not declare that holders of I Class, J Class and/or K Class shares have a Right to participate in the division of any surplus assets or profits of the Company.
- (b) A Directors declaration relates only to a Right to receive a dividend payable after the date of the declaration and at times and on terms as decided by the Directors and does not confer a general or ongoing Right to receive dividends without a further or other Directors declaration conferring that Right.
- (c) The Company may at any time redeem all or redeem any one or more I Class, J Class and/or K Class shares. If the Company elects to do so:
  - (i) the redemption may only be exercised by resolution of the Directors;
  - (ii) the Company will give the holder of the shares to be redeemed seven days written notice of the redemption;
  - (iii) the notice must be signed by a Director and will be delivered to the Notice Address for the holder of those shares with a payment for the amount paid up in respect of those shares; and
  - (iv) any redemption under this Rule will be effective immediately upon the expiry of seven days from the delivery or deemed delivery of the notice of redemption.

## **7.8 L Class shares**

Holders of L Class shares have:

- (a) the right to vote at all meetings of the Company;
- (b) no right to receive any dividends; and
- (c) no right to participate in any division of any surplus assets or profits of the Company.

## **7.9 M Class shares**

Holders of M Class shares have:

- (a) no right to vote at any meeting of the Company;

- (b) no right to receive any dividends; and
- (c) the right to participate in the division of any surplus assets or profits of the Company equally with all other Members having similar rights.

#### **7.10 Repayment of capital**

Regardless of any other provision in this Constitution, but subject to any agreement between the Members, on a winding up or a reduction of the capital of the Company the amount paid up on the shares in each class then issued will be repaid to the holders of those shares in the following order of priority:

- (a) G Class Redeemable Preference Shares;
- (b) F Class Redeemable Preference Shares;
- (c) Ordinary Shares;
- (d) A Class Shares;
- (e) B Class Shares;
- (f) C Class Shares;
- (g) D Class Shares;
- (h) E Class Shares;
- (i) H Class Shares;
- (j) I Class Shares;
- (k) J Class Shares;
- (l) K Class Shares;
- (m) L Class Shares;
- (n) M Class Shares.

#### **7.11 Surplus assets and profits**

Unless otherwise stated in these Rules or on the issue of any shares, but subject to any agreement between the Members, on a division of surplus assets or profits of the Company, the holders of shares having Rights to surplus assets or profits, will share in a division equally with all other holders of such shares in proportion to the numbers of shares having such rights held.

### **8. VOTING RIGHTS**

Unless otherwise stated in these Rules or on the issue of any shares, but subject to any agreement between the Members:

- (a) if a Member holds a share or shares having voting Rights (whether in one or more classes), at a meeting of Members the Member may cast:
  - (i) on a show of hands, 1 vote;
  - (ii) on a ballot, 1 vote for each share held by the Member.
- (b) the holders of each class of shares issued with voting Rights have the Right to receive notice of each meeting of Members;

- (c) the holders of each class of shares issued with voting Rights have the Right to attend each meeting of Members; and
- (d) at meetings of Members or classes of Members, each Member entitled to vote may vote in person, by proxy, by attorney or by representative (if a body corporate).

## **9. VARYING SHARE CLASS RIGHTS**

### **9.1 Special resolution**

- (a) The Rights or restrictions attached to any class of shares may be varied by resolution of the Directors:
  - (i) with the consent in writing of the holders of at least 75% of the shares of that class; or
  - (ii) with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (b) The Rights or restrictions attached to any class of shares may be varied whether or not the Company is being wound up.

### **9.2 Deemed variation**

The Rights conferred upon the holders of preference shares will, unless otherwise expressly provided by the terms of issue of shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

## **10. CHANGES TO SHARE CAPITAL**

- (a) The Company may:
  - (i) increase its share capital by the creation or issue of new shares or new classes of shares;
  - (ii) convert all or any of its shares into a larger or smaller number of shares;
  - (iii) buy back its shares;
  - (iv) reduce its share capital,but only in accordance with the Act.
- (b) A change in share capital under Rule [10\(a\)](#) must result in there being a whole number of shares on issue.

## **11. PRE-EMPTION ON ISSUE OF SHARES**

### **11.1 Offer to existing Members**

If the Company proposes to issue shares of a particular class:

- (a) those shares must first be offered to each Substantial Shareholder;
- (b) those shares must then be offered to the existing Members of that class; and
- (c) as far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

### **11.2 Directors statement**

The offer in Rule [11.1](#) must be made by giving the Members a Directors' statement setting out the terms of the offer, including:

- (a) the number of shares offered; and
- (b) the date on which the offer will expire.

### **11.3 Directors discretion**

Shares not taken up under an offer made under this Rule [11](#) may be issued at the Directors' discretion:

- (a) firstly, to Members in other classes in the same way as specified in Rule [11.1](#); and
- (b) secondly, to persons approved by the Directors in their discretion.

### **11.4 Company may authorise**

- (a) The Company may authorise the Directors to issue shares without complying with Rule [11](#).
- (b) The exercise by the Company of that power on any occasion will not restrict the Company from doing so on any further occasion.

### **11.5 Issue of new Equity Securities**

Rule 11.1 will not apply if:

- (a) the Directors resolve to make a CSF Offer;
- (b) the issue of Equity Securities is a public offer of securities;
- (c) the Directors resolve to issue up to 10% in aggregate of the issued share capital of the Company, provided such issuances are not exercised more than once in any 12 month period;
- (d) the Substantial Shareholders waive (by Substantial Shareholder Majority) the pre-emptive rights provisions related to the issuance of new Equity Securities;
- (e) the Equity Securities are issued as part of an approved employee share option plan;
- (f) the Equity Securities are issued as part of an Exit Event approved in accordance with the Constitution;
- (g) the Equity Securities are issued as part of an arm's length commercial agreement, provided that such issuances in any 12 month period are in aggregate not more than 15% of the issued share capital of the Company;
- (h) the Equity Securities are issued as part of the consideration for an acquisition of an interest in any business, entity or company approved by the Directors by special resolution as required in this Constitution or under the Act; or
- (i) each Substantial Shareholder has an opportunity to acquire their pro rata entitlement to the Sale Shares and there is no material adverse impact on a Substantial Shareholder.

## **12. THIRD PARTY INTERESTS**

- (a) Except where a law or this Constitution requires otherwise, the Company is entitled to treat the registered holder of a share as the absolute owner of that share and is not required to:
  - (i) recognise a person as holding a share on any trust, even if the Company has notice of that trust; or

- (ii) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person except an absolute right of ownership of the registered holder, even if the company has notice of that claim or interest.
- (b) Where shares are held by a person in the capacity as trustee, the shares may be recorded in the register of Members and in ASIC records to identify them as being held subject to a trust.
- (c) Nothing in Rule [12\(b\)](#) limits the operation of Rule [12\(a\)](#).

### **13. CERTIFICATES**

- (a) Subject to the Act, the Company may (but is not obliged to) issue certificates for shares, cancel any certificates for shares, and replace lost or destroyed or defaced certificates for shares, on the basis and in the form which the Directors determine from time to time.
- (b) Only the Member whose name appears first in the Members register in respect of a jointly held share is entitled to a certificate in respect of that share (recording all joint holders of the shares) and delivery of the certificate to that person is delivery to all joint Members.
- (c) Shares are not required to have or be designated by serial numbers.

### **14. CALLS ON SHARES**

#### **14.1 Calls by the Company**

- (a) Any Member may be called by the Directors to pay any Unpaid Amount at any time, subject to any conditions to the contrary to which the shares are subject at the time of their issue.
- (b) A call for payment may be made by notice to the Member:
  - (i) given not less than 7 days before the due date for payment;
  - (ii) specifying the amount payable and the time for payment;
  - (iii) specifying that the call is to be paid in instalments if required by the Directors and the amount and time for payment of each instalment; and
  - (iv) stating that the relevant share or shares may be sold or forfeited in accordance with Rule [15](#) or [16](#) if the Member does not pay to the Company the amount specified in the notice.
- (c) If a Member does not receive a Call Notice or the Company inadvertently omits to give the Member a Call Notice, that omission will not invalidate the call or the liability of the Member for the call.

#### **14.2 Member to pay**

A Member must pay the amount claimed in a Call Notice to the Company in accordance with that Call Notice.

#### **14.3 Liability to a call**

- (a) Where a share is recorded by ASIC as paid to an amount but that amount has not actually been received by the Company as share capital, this will not prevent the Company making a call for payment by the relevant Member nor the sale under a lien or the forfeiture of that share.
- (b) Rule [14.3\(a\)](#) applies whether or not:
  - (i) the Member was the original holder of the share at the time of its issue; and/or

- (ii) the Company's records and/or ASIC's records show that the shares are paid to any amount or are fully paid if the amount recorded has not actually been received by the Company.

#### **14.4 Statement is evidence**

A written statement that an Unpaid Amount is payable by a Member or former Member to the Company in relation to a call including interest, is evidence of those facts against any person claiming to be entitled to the share.

#### **14.5 Directors may postpone**

The Directors may revoke, vary or postpone a call.

#### **14.6 Joint holders**

The joint holders of any shares are jointly and severally liable to pay all calls on those shares.

#### **14.7 Interest payable**

If a call is not paid within the required time, the Member will pay interest at the Prescribed Rate on the outstanding amount from the due date to the date payment is made. The Directors may waive the payment of interest wholly or partly.

#### **14.8 Directors may differentiate**

The Directors may differentiate between Members as to the amount of calls to be paid and/or the times of payment.

#### **14.9 Acceptance of money**

The Company may accept from a Member any part of the amount unpaid in respect of a share whether or not an amount has been called.

### **15. LIEN ON SHARES**

#### **15.1 Company lien**

The Company has a first and paramount lien on each share in the Company for all Unpaid Amounts.

#### **15.2 Lien extends to dividends**

The Company's lien on a share extends to all dividends payable and entitlements in respect of the share. The Company may retain those dividends and entitlements and may apply them towards payment of any Unpaid Amounts.

#### **15.3 Sale of share**

- (a) Subject to Rule [15.3\(b\)](#), the Company may sell any shares on which the Company has a lien by any means and on any terms as the Directors decide.
- (b) A share on which the Company has a lien must not be sold unless:
  - (i) a Call Notice has been sent to the Member's Notice Address to pay the Unpaid Amount claimed;
  - (ii) a sum in respect of which the call was made remains unpaid; and
  - (iii) a notice of the sale has been sent to the Member's Notice Address.
- (c) A sale of shares is subject to Rule [20](#).

#### **15.4 Notice of Sale**

A notice of sale must:

- (a) provide the Member not less than 7 days notice of the sale;
- (b) specify the amount unpaid under the Call Notice; and
- (c) state that the relevant share may be sold if the amount is not paid.

#### **15.5 Director as attorney**

Any Director, as the Member's attorney, may execute a transfer of any shares sold under a lien or may authorise any person to execute a transfer of any shares sold under a lien.

#### **15.6 Register transfer**

The Directors will register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the application of any purchase money.

#### **15.7 Title to shares**

- (a) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale. The purchaser is not liable for any calls which were due before the purchase of the shares unless otherwise determined by the Directors.
- (b) The remedy of any person aggrieved by any sale will be in damages only and against the Company exclusively.

#### **15.8 Application of proceeds**

The proceeds of a sale of shares under a lien will be applied in the following order:

- (a) to discharge or reimburse any expenses incurred in the sale of the share or shares;
- (b) in payment of the amounts due and unpaid in respect of those shares; and
- (c) the balance (if any) to or at the direction of the person entitled to the shares immediately prior to the sale, on delivery by that person of any evidence of ownership of or entitlement to those shares as the Directors require.

#### **15.9 Exempt from lien**

The Directors may exempt a share wholly or partially from the provisions of this Rule.

### **16. FORFEITURE OF SHARES**

#### **16.1 Non-payment**

If a Member does not pay the amount claimed in accordance with a Call Notice, the relevant shares may be forfeited by a Director's resolution.

#### **16.2 Forfeiture includes dividends**

A forfeiture of shares includes the forfeiture of all unpaid dividends and entitlements relating to those shares. The Company may retain those dividends and entitlements and may apply them towards payment of any Unpaid Amounts.

#### **16.3 Forfeiture**

A share must not be forfeited unless:

- (a) a Call Notice has been sent to the Member's Notice Address to pay the Unpaid Amount claimed;
- (b) a sum in respect of which the call was made remains unpaid; and
- (c) a notice of the forfeiture has been sent to the Member's Notice Address.

#### **16.4 Notice of Forfeiture**

A notice of forfeiture must:

- (a) be given not less than 7 days before the due date for forfeiture;
- (b) specify the amount unpaid under the Call Notice; and
- (c) state that the relevant shares may be forfeited if the amount is not paid.

#### **16.5 Cancellation of forfeited share**

A forfeited share is cancelled immediately on forfeiture.

#### **16.6 Liability to the Company**

A person whose shares have been forfeited:

- (a) ceases to be a Member in relation to those shares;
- (b) has no claims or demands against the Company relating to those shares;
- (c) has no other Rights relating to those shares except any residual Rights provided by the Act or by law;
- (d) remains liable to pay to the Company all money that was payable by that person; and
- (e) is liable to pay interest at the Prescribed Rate on unpaid amounts from the due date for payment until paid in full.

#### **16.7 Non-payment**

The Rules as to forfeiture apply in the case of non-payment of any sum payable in respect of a share that becomes payable at a fixed time, as if that sum had been payable in relation to a call for payment.

#### **16.8 Conditions of share holding**

All of the Rules as to forfeiture for non-payment are taken to apply, whether or not a share is fully paid, where:

- (a) the holder of the share fails to comply with any condition pursuant to which the share is held; and/or
- (b) the holder of the share breaches any condition or agreement applying to the holder pursuant to which the share is held; and/or
- (c) an agreement to which the holder is a party or is bound permits the forfeiture of the share,

as though an amount payable in respect of the share is not paid, but without the need for the Company to make a call or demand for payment.

### **17. TRANSMISSION ON DEATH**

#### **17.1 Personal representative or joint holder**

When a Member dies, the Company will recognise:

- (a) the legal personal representative of that Member, where a share is not held jointly; or
- (b) a surviving joint holder or holders of that share, where a share is held jointly, as being entitled to the deceased Member's interest in the share.

#### **17.2 Personal representative as holder**

If Rule [17.1\(a\)](#) applies, after the Member's legal personal representative establishes their entitlement to the satisfaction of the Directors, the legal personal representative:

- (a) may elect to be and upon the election being made, will be registered as a holder of the Member's shares; and/or
- (b) may transfer the shares to another person in accordance with Rule [21](#) but subject to Rule [20](#), and is entitled to the Member's rights under this Constitution.

#### **17.3 Estate remains liable**

When a Member dies, the estate of that Member is not released from any liability in respect of the Member's shares.

### **18. TRANSMISSION ON BANKRUPTCY**

#### **18.1 Trustee in bankruptcy**

- (a) If a Member who is a natural person becomes bankrupt, the Company will recognise the trustee in bankruptcy of that Member as being entitled to the Member's interest in any shares in the Company.
- (b) If a Member who is a company:
  - (i) has a receiver or receiver and manager appointed, or enters into official management, administration or liquidation;
  - (ii) has a petition for its winding up presented to a Court having appropriate jurisdiction;
  - (iii) passes a resolution of its Members for its winding up; or
  - (iv) enters into a scheme or arrangement (not being merely for the purpose of amalgamation or reconstruction),

the Company will recognise the person appointed to administer the assets of the Member as being entitled to the Member's interest in any shares in the Company.

#### **18.2 Trustee as holder**

If Rule [18.1](#) applies, after the Member's trustee in bankruptcy or other person establishes their entitlement to the satisfaction of the Directors, the trustee or that person:

- (a) may elect to be and upon the election being made, will be registered as the holder of the Member's interest in any shares in the Company;
- (b) may transfer the shares to another person, where a share is not held jointly, in accordance with Rule [21](#) but subject to Rule [20](#); and
- (c) is entitled to the Member's rights under this Constitution.

#### **18.3 Bankruptcy Act**

Rule [18](#) has effect subject to the Act and the *Bankruptcy Act 1966 (Cth)*.

## **19. TRANSMISSION ON MENTAL INCAPACITY**

### **19.1 Trustee or guardian etc**

If a Member who is a natural person becomes mentally incapacitated, the Company will recognise the legal personal representative of that Member as being entitled to the Member's interest in any shares in the Company.

### **19.2 Trustee or guardian as holder**

If Rule [19.1](#) applies, after the Member's legal personal representative establishes their entitlement to the satisfaction of the Directors, the legal personal representative:

- (a) may elect to be and upon the election being made will be registered as the holder of the Member's interest in any shares in the Company and is entitled to the Member's rights under this Constitution;
- (b) may transfer the shares to another person, where the shares are not held jointly, in accordance with Rule [21](#) but subject to Rule [20](#).

## **20. VOLUNTARY TRANSFER OF SHARES**

### **20.1 Shares not to be sold**

A Member must not sell any interest in shares held by the Member to any person without first complying with this Rule [20](#). Any sale of shares under this Rule [20](#) must be of whole numbers of shares only.

### **20.2 Sale Notice**

If a Member (the "Selling Member") proposes or wishes to sell any interest in shares held by the Member, that Member must give notice in accordance with Rule [20.3](#) (a "Sale Notice") to the Directors.

### **20.3 Content and effect of Sale Notice**

- (a) A Sale Notice must be in a form acceptable to the Directors and:
  - (i) must state the number and class of shares the Member wishes to sell;
  - (ii) constitutes an offer to sell the relevant shares to the other Members in proportion to the other Members' share holdings at the date of the Sale Notice; and
  - (iii) constitutes the Company as the agent of the Member for a sale of the shares.
- (b) A Sale Notice is irrevocable unless the Directors determine otherwise.
- (c) A Selling Member must provide further information to supplement the Sale Notice when requested by the Directors.

### **20.4 First offer**

- (a) If the Directors receive a Sale Notice, the shares specified in the Sale Notice will first be offered for sale to the other Members ("Non-Selling Members") in proportion to their shareholdings.
- (b) For the avoidance of doubt, if a Substantial Shareholder provides a notice to transfer its shares, the Directors must first offer the right to purchase those shares to another Substantial Shareholder.
- (c) The Directors may vary the procedure in Rule 20.420.4(b), provided that:

- (i) each Substantial Shareholder has an opportunity to acquire their pro rata entitlement to the share being transferred by the selling Substantial Shareholder; and
- (ii) there is no material adverse impact on a Substantial Shareholder.

## **20.5 Response to Sale Notice**

During the period of 14 days immediately after the receipt of a Sale Notice (the "Offer Period") any Non-Selling Member may elect to purchase the shares only on the terms in the Sale Notice.

## **20.6 Sale to other Members**

- (a) Any Member who makes an election under Rule [20.5](#) is entitled to purchase the relevant shares.
- (b) Where more than one Non-Selling Member makes an election under Rule [20.5](#), a sale of shares to those Members will be effected in proportion to the number of shares held by the Non-Selling Members as far as practicable unless the Directors agree otherwise.

## **20.7 Transfer to another person**

If no Member makes an election under Rule [20.5](#) before the end of the Offer Period:

- (a) the Selling Member may sell the shares to a Member or Members, approved by the Directors or to any other person or persons approved by the Directors; and
- (b) any sale of the shares must be made only on the terms in the Sale Notice.

## **20.8 Default by Selling Member**

If a Selling Member defaults in transferring the shares under this Rule:

- (a) any Director may execute a transfer of the shares as attorney for the Selling Member;
- (b) the Company may receive the purchase price for the Selling Member;
- (c) the Directors will, on receipt of the purchase price by the Company, register the buyer's name in the register of Members once approved by the Directors; and
- (d) the Company will hold the purchase price on trust for the Selling Member.

## **20.9 Conditional purchase**

A purchase of shares by any person is conditional on the receipt of all approvals and consents required by law in Australia. If any approvals or consents are required, the purchase will be completed within 14 days after all required approvals or consents are received.

## **20.10 No encumbrances**

A Member must not pledge, mortgage, charge or otherwise encumber shares held by the Member without the prior written consent of the Directors. Any consent may be given or withheld in the Directors' discretion.

- (a) Related Body Corporate
- (b) Rule [20](#) does not apply to any transfer by a Selling Member to any Related Body Corporate of the Selling Member;
- (c) If a Selling Member proposes to transfer shares to a Related Body Corporate, that Member must and is deemed to give an undertaking satisfactory to the Non-Selling Members that it will not sell the shares in the Related Body Corporate without first offering

them to the Non-Selling Members under Rule [20](#) as if the shares in the Related Body Corporate were shares in the Company;

- (d) After a transfer to a Related Body Corporate under this Rule, the Selling Member remains liable to perform its obligations under this Constitution to the same extent as if the transfer had not taken place.

#### **20.11 Non-complying transfer**

A transfer or purported transfer of shares otherwise than in accordance with this Rule, or otherwise permitted by this Constitution, is void unless the Directors determine otherwise.

#### **20.12 Drag-along Rights to apply**

If Members who together hold 60% of the shares on issue propose to sell all of their Ordinary shares to a third party, the remaining Members may be required by the selling Members to sell their shares on the same terms.

#### **20.13 Tag-along Rights to apply**

If Members who together hold 60% of the shares on issue propose to sell their Ordinary shares to a third party, the remaining Members may volunteer to sell their shares on the same terms.

#### **20.14 Rule to apply**

- (a) This Rule [20](#) applies to transfers of shares effected under Rules [17](#), [18](#) and/or [19](#).
- (b) Where not all of the shares the subject of a Sale Notice are sold then:
  - (i) the shares remaining unsold will be offered to Non-Selling Members who make an election under Rule [20.5](#) in proportion to their holdings as far as practicable; and
  - (ii) if not all of those shares are sold, the Sale Notice will be deemed to be withdrawn in respect of the unsold shares.
- (c) Where the transfer of shares is subject to Rule 20.13, then the transfer is not subject to Rule 20.4(b).

### **21. TRANSFER OF SHARES**

#### **21.1 Form of transfer**

- (a) A Member may transfer all or any of the Member's shares only as provided in these Rules. Any transfer will be subject to this Constitution and the Act.
- (b) A transfer of shares must be:
  - (i) in the form in Schedule 1 or in any other form that the Directors approve;
  - (ii) signed by the transferor and the transferee; and
  - (iii) approved by the Directors.
- (c) The Directors will be deemed to have approved the transfer only if:
  - (i) the Directors resolve to approve the transfer; or
  - (ii) the transfer is permitted under an agreement between all of the Members and the terms of that agreement (if any) relating to the transfer have been fully satisfied; or

- (iii) the transfer is a permitted transfer under Rule [20](#) and all conditions set out in that Rule have been fully satisfied.

## **21.2 Refusal to approve transfer**

The Directors may refuse to approve a transfer of shares without giving reasons.

## **21.3 Effect of registration**

- (a) A transferor of shares is the holder of those shares until a transfer is registered.
- (b) A transferee of shares does not become the holder of the shares until the name of the transferee is entered in the register of Members.

## **21.4 Transferee bound**

Any person who acquires shares from another person is deemed to be bound by the terms of this Constitution, as if the person were an original party to it, immediately upon registration of the person as a Member.

## **21.5 Conditions of registration**

- (a) A transfer of shares must not be registered unless the Directors have approved or are deemed to have approved the transfer. Where the Directors accept delivery of a transfer prior to an approval or deemed approval, acceptance of delivery does not constitute approval.
- (b) In order to be registered, a transfer of shares must be delivered to the registered office of the Company, with:
  - (i) the transfer properly signed by the seller and the buyer;
  - (ii) any registration fee not exceeding \$100.00 as the Directors require;
  - (iii) evidence of the payment of any applicable stamp duty;
  - (iv) the transferor's share certificate or certificates; and
  - (v) any other information the Directors require to establish the transferor's right to transfer the shares.

## **21.6 Registration of transfer**

The Company will:

- (a) register a transfer of shares in accordance with this Rule;
- (b) register the transferee as the holder of the shares in the register of Members, subject to this Constitution.

## **21.7 Suspension of registration**

The registration of transfers may be suspended by the Directors unconditionally or on conditions determined by the Directors. Any suspension may be indefinite or for a period determined by the Directors.

## **22. EXIT EVENT**

- (a) The Directors may propose an Exit Event.
- (b) A Substantial Shareholder Majority must approve the Exit Proposal.

- (c) If an Exit Proposal is approved by a Substantial Shareholder Majority, all Holders of shares and Directors must exercise all rights and do all things to enable the Exit Event to occur.

## **23. MEETINGS GENERALLY**

### **23.1 How to hold a meeting**

Any meeting of Members (of one or more classes) or Directors may be held by any combination of any of the following means:

- (a) in person at one or more venues determined for that purpose; and/or
- (b) by using any written, visual, electronic and/or audiological technology that gives each person participating a reasonable opportunity to participate in the meeting while it continues and must permit each person participating in the meeting:
  - (i) to hear and be heard by each other person participating in the meeting; or
  - (ii) to see and hear and be seen and be heard by each other person participating in the meeting; or
  - (iii) to otherwise communicate with and receive communication from each other person participating in the meeting.

### **23.2 Notice**

A notice of a meeting may be given by telephone or other electronic means of communication and must:

- (a) specify the date and time for the proposed meeting;
- (b) specify the medium or media for conducting the meeting, the day and time of the meeting and, in the case of a meeting in person, the place of the meeting; and
- (c) specify the business to be transacted at the meeting.

### **23.3 Using technology**

Where any form of technology is used to conduct a meeting:

- (a) a person participating in the meeting is taken to be present at the meeting;
- (b) all the provisions in these Rules relating to meetings apply, so far as they can and with such changes as are necessary, to meetings in more than one location or using that technology; and
- (c) if the technology used encounters a technical difficulty, whether before or during the meeting, which results in a person not being able to participate in the meeting, the chairperson may, subject to the Act, allow the meeting to continue or may adjourn the meeting:
  - (i) for a reasonable period required to resolve the difficulty and/or make alternative arrangements for the meeting; or
  - (ii) to another time and location as the chairperson determines.

### **23.4 Conduct of meetings**

- (a) The chairperson of a meeting is responsible for the conduct of the meeting and for the procedures to be adopted at the meeting. The chairperson may require the adoption of procedures which are in his or her opinion necessary or desirable for:

- (i) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business at the meeting; and/or
  - (ii) the proper and orderly casting or recording of votes at the meeting.
- (b) The chairperson of a meeting may at his or her discretion at any time during the course of the meeting adjourn the meeting or:
- (i) any business, motion, question or resolution being considered or remaining to be considered; and/or
  - (ii) any debate or discussion, and
  - (iii) may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to another meeting.

## **24. MEETINGS OF MEMBERS**

### **24.1 Director may convene**

Any Director may convene a meeting of Members whenever that Director decides and may cancel any meeting convened by that Director prior to the commencement of the meeting.

### **24.2 Member's request**

- (a) The Directors must call and arrange to hold a meeting of Members on the request of any Member or Members holding at least 5% of the votes that may be cast at a meeting of Members. The request from the Members must:
- (i) state any resolution to be proposed at the meeting;
  - (ii) be signed by the Members making the request; and
  - (iii) be given to the Directors.
- (b) The Directors may refuse to convene the meeting if the voting on the proposed resolution is not within the power of the Members.

### **24.3 Members may convene**

Two or more Members holding at least 5% of the votes that may be cast at a meeting of Members, may call and arrange to hold a meeting of Members. The Members calling the meeting must pay the expenses of calling and holding the meeting.

### **24.4 Notice of meeting**

- (a) A meeting of Members can only be called by giving the Members notice of the meeting.
- (b) A notice of meeting of Members does not need to be given to Members who are not entitled to notice of meetings or to vote.
- (c) The Directors may postpone a meeting of Members or change the venue for the meeting by giving written notice to all Members who received the original notice of meeting at least 48 hours before the appointed time. That notice must specify the time and place for the meeting.
- (d) If a Member does not receive a meeting notice or the Directors inadvertently omit to give the Member a meeting notice, that omission will not invalidate the proceedings or any resolution passed at the meeting.
- (e) No business is to be transacted at any meeting of Members except that contained in the meeting notice unless all the Members entitled to vote and agree otherwise.

## **24.5 Quorum**

- (a) Subject to Rule 3, a quorum will be two Members who are entitled to receive notice of and vote at the meeting.
- (b) A quorum of Members must be present throughout each meeting of Members. If a quorum is not present at any time the meeting is not then validly convened, but without affecting the validity of any business conducted before the absence of a quorum occurs.

## **24.6 Determining a quorum**

In determining whether a quorum is present, a person attending as a proxy, or representing a body corporate that is a Member, is deemed to be a Member.

## **24.7 Procedure where no quorum**

- (a) If a quorum is not formed within 30 minutes after the appointed meeting time the meeting will be adjourned.
- (b) A meeting adjourned under this Rule will be rescheduled to a day (not more than 14 days after the adjourned meeting) and time that the Directors decide failing which the meeting is adjourned to the same day and time in the next week.
- (c) Any rescheduled meeting will be held at the same place or using the same media or technology as the adjourned meeting unless the Directors determine otherwise.
- (d) If at the rescheduled meeting a quorum is not formed within 30 minutes after the appointed time, the Members attending and entitled to vote (even if only one) will constitute a quorum or, if no Members entitled to vote attend, the meeting will be cancelled.

## **24.8 Election of chairperson**

- (a) The Directors will elect 1 Director to preside as chairperson at every meeting of Members. If the Directors have elected a chairperson of Directors, that person will be deemed to be elected as the chairperson at each meeting of Members.
- (b) Where a meeting of Members is held and:
  - (i) a chairperson of Directors has not been elected;
  - (ii) the chairperson of Directors is not present within 15 minutes after the appointed time; or
  - (iii) the chairperson of Directors is unwilling to act;the Members present will elect one Member to be chairperson of the meeting.

## **24.9 No casting vote**

The chairperson does not have a casting vote in addition to any vote the chairperson has as a Member.

## **24.10 Adjournment**

- (a) An adjournment of a meeting of Members at which a quorum has been formed must only be made with the consent of a majority of Members attending and entitled to vote.
- (b) Any adjournment may change the time or the venue for the meeting.
- (c) Only business left unfinished from the meeting adjourned must be transacted at any rescheduled meeting.

#### **24.11 Notice for adjourned meeting**

- (a) If a meeting is to be adjourned for 30 days or more, notice of the adjourned meeting must be given as if it was a new meeting.
- (b) A notice of meeting is not required to be given for an adjourned meeting where the adjournment is for less than 30 days.

#### **24.12 Decisions of Members**

Unless a special resolution is required by this Constitution or the Act, questions arising at a meeting of Members must be decided by a majority of votes cast by the Members present at the meeting and entitled to vote. Decisions made this way are for all purposes a decision of the Members.

#### **24.13 Voting**

- (a) A resolution must not be put to a vote at a meeting of Members if a quorum of Members is not present at the time the resolution is put to a vote.
- (b) Any vote taken at a meeting of Members is decided on a show of hands unless a ballot is demanded:
  - (i) by the chairperson;
  - (ii) by a Member or Members present and holding at least 10% of the votes that may be cast on the resolution; or
  - (iii) by a Member or Members holding voting shares on which an aggregate sum has been paid up equal to at least 10% of the total sum paid up on all the voting shares.

#### **24.14 Declaration**

If a ballot is not demanded, the chairperson's declaration that a resolution has been carried or lost with an entry to that effect in the Company's records is conclusive evidence of that fact. It is not necessary to record the number or proportion of votes recorded for or against the resolution.

#### **24.15 Demand for ballot**

A ballot will be taken immediately if one is demanded or at any other time after an interval or adjournment or otherwise as the chairperson decides. The result of the ballot will be recorded as the resolution of the meeting at which the ballot was demanded.

#### **24.16 Ballot for chairperson**

Any ballot demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

#### **24.17 Withdraw demand**

The demand for a ballot may be withdrawn at any time before the ballot is taken.

#### **24.18 Joint holders**

When shares are held jointly, the senior Member's vote will be accepted to the exclusion of the votes of other joint Member or Members. Seniority is determined by the order in which the Member's names stand in the register of Members.

#### **24.19 Members fully paid**

A Member is only entitled to vote at a meeting of Members if all calls and other amounts presently payable by the Member in respect of shares held by the Member have been paid.

#### **24.20 Objection to qualification**

Any objection to the qualification of a person to vote must be made at the same meeting at which that person's vote is tendered. Any objection must be referred to the chairperson of the meeting whose decision is final and:

- (a) any vote approved will be valid for all purposes; or
- (b) any vote disallowed will be invalid and must be disregarded.

#### **24.21 Circular resolution**

- (a) Members may pass a resolution without a meeting of Members if all of the Members entitled to vote on the resolution:
  - (i) sign a document stating that they are in favour of the resolution in which case duplicate copies of the document may be used; and/or
  - (ii) indicate electronically that they are in favour of the resolution in which case separate electronic communications and/or forms of electronic communications may be used.
- (b) A resolution is deemed to be passed at the time when the last Member signs or confirms they are in favour of the resolution.
- (c) Only those Members holding shares with voting Rights and who are entitled to vote at a meeting of Members are required to participate in a resolution under this Rule.

#### **24.22 Third parties**

Even if they are not Members of the Company, the following persons have the right to attend any meeting of Members and, if requested or permitted by the chairperson, to speak at the meeting:

- (a) any Director;
- (b) any Secretary; and/or
- (c) any other person invited by the Directors.

### **25. RULES FOR VOTING BY PROXY**

#### **25.1 In writing**

An instrument appointing a proxy must be in writing and signed by:

- (a) the appointor; or
- (b) the appointor's attorney; or
- (c) where the appointor is a body corporate, the person authorised under the Act or by an authorised officer or attorney of the appointor.

#### **25.2 How to vote**

If the document appointing a proxy specifies how the proxy is to vote in relation to a resolution, the proxy must vote as specified in the document. Any vote tendered otherwise is invalid and must be disregarded.

#### **25.3 Authority**

A document appointing a proxy confers the authority to demand a ballot.

#### **25.4 Form of proxy**

The appointment of a proxy must be substantially in the form in Schedule 2.

## **25.5 Delivery before meeting**

- (a) The appointment of a proxy is not valid unless the appointment document and a copy of any power of attorney or other authority under which that document is signed are delivered to the Company not less than 48 hours before the appointed meeting time.
- (b) The relevant documents must be delivered to the Company's registered office or to any other place in Australia specified in the notice convening the meeting.

## **25.6 Validity**

A vote tendered in accordance with a proxy or a power of attorney is valid even if:

- (a) the appointor or principal dies or becomes mentally incapacitated;
- (b) the proxy or power of attorney is revoked in any way; or
- (c) any share in relation to which the authority is given is sold or transferred,

but only if the Company had no written notice of any defect before any vote is exercised.

## **26. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

### **26.1 Appointment**

- (a) The Directors may appoint any person as a director provided that the number of Directors does not exceed any maximum number (if any) of Directors determined by these Rules or by the Members.
- (b) The appointment of a Director under paragraph (a) is not required to be ratified by the Members.
- (c) The Members may appoint a Director provided that the number of Directors does not exceed any maximum number (if any) of Directors determined by these Rules or by the Members. The appointment must be effected by:
  - (i) ordinary resolution of Members; or
  - (ii) where a meeting to consider the appointment has been adjourned for a lack of a quorum, a resolution signed by a Member or Members holding in excess of 50% of the issued shares carrying voting Rights and who are entitled to vote.
- (d) Subject to these Rules and the Act, a Director holds office for life.

### **26.2 Removal of a Director by Members**

The Members may remove any Director. The removal must be effected by:

- (a) ordinary resolution of Members; or
- (b) where a meeting to consider the removal has been adjourned for a lack of a quorum, a resolution signed by a Member or Members holding in excess of 50% of the issued shares carrying voting Rights and who are entitled to vote.

### **26.3 Other removal for Directors**

In addition to Rule [26.2](#), a Director is removed if the Director:

- (a) is disqualified by the Act;
- (b) is otherwise removed under these Rules;

- (c) is charged with or convicted of an indictable offence;
- (d) dies;
- (e) resigns;
- (f) does not attend at least 3 consecutive meetings of Directors without the consent of the other Directors; and/or
- (g) is or becomes uncontactable for more than 2 months without the consent of the other Directors.

#### **26.4 Remuneration**

The Directors will be entitled to be paid the remuneration determined by a meeting of Members.

#### **26.5 Director's expenses**

- (a) The Directors are entitled to be reimbursed for all expenses incurred by them in promoting and forming the Company.
- (b) The Directors will be entitled to be paid all travelling and other expenses properly incurred by them:
  - (i) in attending meetings of the Directors;
  - (ii) in attending meetings of Members; and/or
  - (iii) in connection with the Company's business.

#### **26.6 No shareholding**

Directors are not required to hold shares in the Company.

### **27. POWERS AND DUTIES OF DIRECTORS**

#### **27.1 Directors manage**

- (a) Subject to the Act and to these Rules, the Company's business will be managed by the Directors.
- (b) The Directors may exercise all powers of the Company except where those powers must be exercised by the Company in general meeting under the Act or these Rules.

#### **27.2 Directors modify the Rules**

- (a) The Directors may modify these Rules by resolution at a meeting of Directors.
- (b) For the avoidance of doubt, resolutions for modification of these Rules must be agreed to by a majority of the current Directors.
- (c) Unless a Member agrees or is required by the Act, that Member is not bound by any modification of this Constitution to the extent that the modification:
  - (i) requires the Member to take up additional shares;
  - (ii) increases the Member's liability to contribute to the share capital of the Company; or
  - (iii) imposes or increases restrictions on the Right to transfer any shares held by the Member.

#### **27.3 All powers of Company**

Without limiting Rules [27.1](#) and [27.2](#), the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company or all or any of its uncalled capital;
- (c) issue debentures; and/or
- (d) give any other security for a debt, liability or obligation of the Company or of any other person.

#### **27.4 Corporate groups**

- (a) If the Company is a wholly owned subsidiary of another Company (the "Holding Company"), the Directors may act:
  - (i) in the best interests of the Holding Company; and
  - (ii) contrary to the best interests of the Company.
- (b) The Directors must not act in the way referred to in Rule [27.3\(a\)](#) if the Company is insolvent at the time or would by virtue of the Directors' actions become insolvent.

#### **27.5 Appointment of attorney**

- (a) The Directors may appoint any person or persons under a power of attorney to be the attorney or attorneys of the Company.
- (b) The appointment may be:
  - (i) for any purpose;
  - (ii) in relation to any of the Directors powers, authorities and discretions;
  - (iii) for any period; and/or
  - (iv) subject to any conditions as the Directors decide.

#### **27.6 Provisions of power of attorney**

Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Directors decide and may authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

### **28. PROCEEDINGS OF DIRECTORS**

#### **28.1 Meeting of Directors**

- (a) Any Director may convene a meeting of Directors. The Secretary must convene a meeting of Directors at the request of a Director.
- (b) A written notice of a meeting of Directors must be sent to each Director within 7 days after a request to convene a meeting.

#### **28.2 Director's personal interest**

- (a) A Director is not disqualified from contracting with the Company or any Related Body Corporate in any capacity by reason of holding the office of Director.
- (b) If a Director has a material personal interest in any matter that relates to the affairs of the Company, the Director must disclose that interest to the other Directors unless the

Director is not required to disclose the interest in the circumstances listed in Section 191(2) of the Act.

- (c) The notice disclosing the Director's material personal interest must:
- (d) give details of the nature and extent of the interest and how it relates to the affairs of the Company;
- (e) be given at a meeting of Directors as soon as practicable after the Director becomes aware of the interest; and
- (f) be recorded in the minutes of the meeting of Directors at which the notice is given.
- (g) If the Director properly discloses the interest:
  - (i) the Director may attend at a meeting of Directors and vote on whether the Company enters into any arrangement;
  - (ii) the arrangement may be entered into;
  - (iii) the Director may vote on matters involving the arrangement;
  - (iv) the Director will not be liable to account for any profit or benefit received by the Director under the arrangement;
  - (v) the Director may sign any document relating to the arrangement which will not affect its validity in any way;
  - (vi) the arrangement may not be avoided because of the Director's interest.
- (h) This Rule [27.2](#) does not [apply](#) if the Company has only 1 [Director](#).

### **28.3 Quorum**

- (a) Subject to Rule [3](#), a quorum at a meeting of Directors will be:
  - (i) at least 2 Directors; or
  - (ii) that number of Directors specified by a resolution of the Directors.
- (b) A quorum of Directors must be present throughout each meeting of Directors. If a quorum is not present at any time the meeting is not then validly convened, but without affecting the validity of any business conducted before the absence of a quorum occurs.

### **28.4 Election of chairperson**

The Directors may elect 1 Director as chairperson of meetings of Directors and may determine the period for which the chairperson is to hold office.

### **28.5 Chairperson not present**

Where a meeting of Directors is held and the chairperson:

- (a) has not been elected; or
- (b) is not present within 15 minutes after the appointed time; or
- (c) is unwilling to act,

then the Directors present will elect 1 other Director to be chairperson of the meeting.

### **28.6 No casting vote**

The chairperson does not have a casting vote in addition to any vote the chairperson has as a Director.

## **28.7 Circular resolution**

- (a) Directors may pass a resolution without a meeting of Directors if all of the Directors entitled to vote on the resolution:
  - (i) sign a document stating that they are in favour of the resolution in which case duplicate copies of the document may be used; and/or
  - (ii) indicate electronically that they are in favour of the resolution in which case separate electronic communications and/or forms of electronic communications may be used.
- (b) A resolution is deemed to be passed at the time when the last Director signs or confirms they are in favour of the resolution.

## **28.8 Validity of acts**

All things done by any meeting of Directors or by any person acting as a Director will be valid even though it subsequently becomes known:

- (a) that there was some defect in the appointment of a person to be a Director or to act as a Director; and/or
- (b) that a person appointed was disqualified.

## **28.9 Decisions of the Directors**

- (a) A resolution must not be put to a vote at a meeting of Directors if a quorum of Directors is not present at the time the resolution is put to a vote.
- (b) Any question arising at a meeting of Directors is determined by a simple majority of votes of the Directors unless otherwise required by these Rules or the Act.

## **29. ALTERNATE DIRECTORS**

### **29.1 Appointment**

A Director may appoint any person to be an alternate director in his or her place during any period as the Director requires, but only:

- (a) with the approval of the other Directors; and
- (b) while the appointor is not available to act.

### **29.2 Notice of meetings**

- (a) An alternate director is entitled to notice of all meetings of Directors unless the appointor is available to act.
- (b) An alternate director is entitled to vote at meetings of Directors unless the appointor is present at the meeting.

### **29.3 Power of alternate**

An alternate director may exercise any of the appointor's powers as a Director during any period that the appointor is unavailable to do so.

### **29.4 Termination of appointment**

The appointment of an alternate director will terminate:

- (a) on notice by the appointor even though the appointment period (if any) has not expired;
- (b) automatically if the appointor ceases to be a Director.

## **29.5 Responsibility**

An alternate director will, whilst acting as Director, be responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the Director by whom he or she was appointed.

## **30. MANAGING DIRECTOR**

### **30.1 Appointment**

The Directors may from time to time appoint a Director to be the managing director of the Company. The managing director's appointment will be on the terms the Directors decide. The Directors may revoke the managing director's appointment at any time.

### **30.2 Termination**

A managing director's appointment automatically terminates if he or she ceases for any reason to be a Director.

### **30.3 Remuneration**

A managing director will be entitled to receive remuneration by way of any combination of:

- (a) a salary;
- (b) commission; and/or
- (c) participation in profits, as the Directors decide.

### **30.4 Powers**

- (a) The Directors may confer upon a managing director any of the powers exercisable by them with any conditions or restrictions as the Directors decide.
- (b) Any of those powers may be made concurrent with or exclusive of the powers of the Directors.
- (c) The Directors may at any time withdraw, add to or vary any of those powers.

## **31. SECRETARIES**

- (a) The Directors may appoint any person as a Secretary. A Secretary's appointment will be on the terms the Directors decide.
- (b) Where the Company only has 1 Director and no Secretary has been appointed, the Director is required to undertake the functions of a Secretary.
- (c) The Directors may terminate a Secretary's appointment and/or remove a Secretary.
- (d) A person appointed as a Secretary is removed if he or she is disqualified by the Act.

## **32. COMMON SEAL**

### **32.1 Adopt**

The Directors may resolve that the Company adopt a common seal. If the Company adopts a common seal, it will conform with the requirements of the Act.

### **32.2 Duplicate**

The Directors may adopt a duplicate common seal. Any duplicate common seal must be a copy of the common seal with the words "Duplicate Seal", "Share Seal" or "Certificate Seal" added to it.

### **32.3 Prohibited use**

A Director must not use, or authorise the use of, a seal which purports to be the common seal of the Company (or a duplicate of the common seal) if the common seal does not comply with the requirements of this Rule.

## **33. EXECUTION OF DOCUMENTS**

### **33.1 Execution of documents**

The Company executes a document if the document is signed:

- (a) by 2 Directors where there is more than 1 Director;
- (b) by 1 Director where that Director is authorised by a resolution of a meeting of Directors where there is more than 1 Director;
- (c) by a Director and a Secretary (if one has been appointed);
- (d) if the Company has only 1 Director and no Secretary has been appointed, by that Director alone; or
- (e) if the Company has only 1 Director who is also the sole Secretary, by that Director.

### **33.2 Execution of deeds**

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this Rule [33](#).

### **33.3 Cheques and promissory notes**

All cheques and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed:

- (a) by 1 Director in the case of a single director company; or
- (b) if more than 1 Director is appointed, then by any 2 Directors; or
- (c) in any other manner as the Directors decide.

### **33.4 No limitation**

This Rule will not be interpreted as limiting the manner in which the Company may execute a document (including a deed).

## **34. INSPECTION OF RECORDS**

### **34.1 Conditions**

The Directors may determine whether and under what conditions the accounting records or other documents of the Company will be open to the inspection of Members.

### **34.2 No right**

A Member does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Directors or by the Company.

### **34.3 Directors right**

The Directors have the right at any time to inspect the accounting records or other documents of the Company, whether or not they are a Member.

## **35. DIVIDENDS AND RESERVES**

### **35.1 Ability to pay**

The Company may pay a dividend in the way authorised by and in accordance with the Act. The Company must not pay a dividend unless:

- (a) the Company's assets exceed its liabilities immediately before the resolution to pay the dividend is passed and the excess is sufficient for the payment of the dividend;
- (b) the payment of the dividend is fair and reasonable to the Members as a whole; and
- (c) the payment of the dividend does not materially prejudice the Company's ability to pay its creditors.

### **35.2 Dividends may be paid**

Dividends may be paid by the Company:

- (a) in respect of the shares of any class or classes to the exclusion of any other class or classes; and/or
- (b) at different rates in respect of any class or classes of shares.

### **35.3 Dividend by resolution**

The Company may resolve to pay dividends by resolution of the Directors. Each Member entitled to receive a dividend will be given notice of the dividend, the terms and rate of the dividend and the due date for payment.

### **35.4 Terms of dividend**

The Directors may determine that a dividend is payable and may fix:

- (a) the amount of the dividend;
- (b) the class or classes of shares to which the dividend will apply;
- (c) any pro rata apportionment of the dividend for any period for which a share has been held;
- (d) the time for payment; and/or
- (e) the priority of the payment of any dividend between classes of Members.

### **35.5 Payment**

The payment of any dividend may be satisfied by any combination of:

- (a) payment in cash;
- (b) the issue of shares in the Company; and/or
- (c) the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.

### **35.6 Resolution of issues**

In relation to a distribution under Rule [35.5](#), the Directors may:

- (a) settle any specific dispute or difficulty arising from a distribution in any way they decide;
- (b) set the value of specific assets or any part of them;
- (c) determine that cash payments will be made to any Members on the basis of the value fixed in order to adjust the rights of all parties; and/or
- (d) vest any specific assets in trustees as the Directors decide.

### **35.7 Interim dividends**

The Directors may authorise the payment to the Members of any interim dividends as appear to the Directors to be justified.

### **35.8 Revocation**

The Directors may revoke a dividend or the payment of a dividend at any time prior to the date or time for payment.

### **35.9 No interest**

Interest is not payable by the Company in relation to any dividend which has been resolved but not paid. Dividends paid in respect of any shares will be non-cumulative unless otherwise stated in these Rules or in the resolution to pay the dividend or the terms on which the shares were issued.

### **35.10 Reserves**

- (a) Before recommending any dividend, the Directors may set aside any amounts which they think proper or appropriate as reserves. Any reserves may be applied at the discretion of the Directors for any purpose for which the property of the Company may be properly applied.
- (b) The reserves may be used in the business of the Company or be invested in any investments as the Directors decide, but only until those reserves are required for their intended purpose.

### **35.11 Carry forward profits**

The Directors may carry forward any part of the Company's profits without transferring those profits to a reserve.

### **35.12 Dividends in proportion**

After the rights of any Members entitled to special dividend rights have been satisfied, and unless the Directors determine otherwise, all dividends must be paid in proportion to the amounts paid or credited as paid on the shares to which the dividend relates.

### **35.13 Payment in advance**

An amount paid or credited as paid on a share in advance of a call will not be taken for the purposes of this Rule to be paid or credited as paid on the share.

### **35.14 Deductions**

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

## **36. COMPANY LOANS**

### **36.1 Approval**

- (a) The Company may lend any amounts out of any money held by the Company to any Member or any Associate of a Member.
- (b) The Company may provide financial accommodation as the term is used for the purposes of Div 7A to any Member or any Associate of a Member.
- (c) A loan to a Member or any Associate of a Member must be made on the terms in Rule [36.2](#) where any loan or financial accommodation would be treated as a loan for the purposes of Div 7A.

### **36.2 Terms of loan**

Any loan by the Company to a Member or any Associate of a Member is subject to the following conditions:

- (a) this Constitution together with the Company's financial records and any other documents required by Div 7A will form the written loan agreement establishing the loan;
- (b) the rate of interest payable on the loan will be not less than the Interest Rate;
- (c) the maximum term of the loan will be the maximum term for the purposes of Div 7A; and
- (d) loan repayments must be made each year which are not less than the minimum yearly repayment requirements of Div 7A.

## **37. DISPUTE RESOLUTION**

### **37.1 Conduct**

If a disagreement or dispute arises that cannot be resolved, the dispute must be mediated in accordance with this Rule.

### **37.2 No proceedings**

A Member must not start court proceedings about a dispute unless the Member first complies with this Rule, except:

- (a) where a Member seeks urgent injunctive relief; and/or
- (b) where the dispute relates to compliance with this Rule.

### **37.3 Notice**

A Member claiming that a dispute has arisen must notify each other Member and the Directors giving details of the dispute (**Dispute Notice**).

### **37.4 Best efforts**

Each disputing Member must, within 7 days after the Dispute Notice is given:

- (a) prepare, and deliver to each other Member and the Directors, a brief statement setting out the disputing Member's position on the dispute and its reasons for adopting that position; and
- (b) give to the other Members and the Directors any information any of them may reasonably require to determine the issues relevant to the dispute.

### **37.5 Meeting to resolve**

Within 7 days after the statements are delivered (**Resolution Period**), a representative of the disputing Member, with full authority to resolve the dispute, must meet (in person or by any means of communication) with the other Members and consult to try to resolve the dispute.

### 37.6 Where dispute resolved

If the dispute is resolved within the Resolution Period:

- (a) the disputing Member or Members must, as soon as possible, execute a statement setting out the terms of the agreement reached; and
- (b) each disputing Member or Members must do anything (including execute any document) reasonably required by the other Members to give effect to the agreement.

### 37.7 Resolution by mediation

- (a) If the dispute is not resolved within the Resolution Period, a disputing Member may, within 7 days after the end of the Resolution Period, give a notice (**Mediation Notice**) to the other Members and the Directors, requiring the dispute be referred for mediation to a single mediator:
  - (i) who must be:
    - (A) appointed by agreement between the relevant Members; or
    - (B) if no agreement is reached within 7 days after the service of the Mediation Notice, appointed by the then President of the Law Society of the state in which the Company has its registered office; and
  - (ii) who must also have the qualifications set out in Rule [37.8](#).
- (b) The relevant Members must use their best endeavours to resolve the dispute at mediation, including:
  - (i) attending, in person or by representative, every session of mediation; and
  - (ii) providing the mediator with any information reasonably requested by the mediator.
- (c) The charges for the mediation may be fixed by the mediator and must be paid by the parties subject to the dispute equally or in such proportions as the mediator determines.
- (d) If the mediator makes any determination in relation to the dispute, the mediator's determination is final and binding on all parties to the dispute.
- (e) The disputing Member or Members must give effect to the mediator's decision promptly, including signing any terms of settlement.
- (f) If the dispute is settled by mediation and the parties sign the terms of settlement, those terms will be binding on all Members.
- (g) It must be a term of the engagement of the mediator that the parties release the mediator from any Court proceedings relating to this Constitution or the mediation.
- (h) The mediator is not bound by the rules of natural justice and may discuss the dispute with a Member in the absence of any other Member.

### 37.8 Mediator qualifications

A mediator must:

- (a) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the dispute;
- (b) be independent of each Member and any of the Member's related parties;

- (c) have no interest or duty which conflicts or may conflict with the mediator's function as an expert; and
- (d) have professional indemnity insurance of an amount reasonable and customary for a person undertaking the mediator's activities.

### **37.9 Not disputes**

For the avoidance of doubt, the failure by the Directors or Members to pass any resolution by the required majority does not alone constitute a dispute to which this Rule applies.

## **38. NOTICES**

### **38.1 Form of notice**

Any notice or other communication in connection with this Constitution must be in writing, signed by the person giving the notice and be addressed to the Notice Address of the person to whom it is to be given.

### **38.2 Time of delivery**

The notice or other communication will be deemed to be received:

- (a) in the case of a posted letter, on the third day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent; and/or
- (e) in the case of transmission by email, on the day of transmission if the medium sending the notice states that the transmission was completed before 5:00pm on a business day, otherwise on the next business day. This method of service is effective only if the medium states that it was sent in full and without error

and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

## **39. INDEMNITY AND INSURANCE**

### **39.1 Indemnity against liability**

To the extent permitted by the Act, the Company may indemnify every person who is, or who has been, a director or officer of the Company or any Related Body Corporate against:

- (a) any liability incurred by them in their capacity as a director or officer, to a person other than the Company or Related Body Corporate, except where the liability relates to their own negligence or breach of duty or lack of good faith; and/or
- (b) any liability for legal costs or expenses incurred by them in defending any proceedings in which they are acquitted or the Court grants relief in their favour in relation to the office of director or officer.

### **39.2 Insurance**

To the extent permitted by the Act, the Company may insure or pay any premiums on a policy of insurance for a person who is or has been a director or officer of the Company or of a Related Body Corporate against any liability for which the Company indemnifies the director or officer under Rule [39.1](#).

### **39.3 Resolution**

A Director may vote in favour of a resolution that the Company grant an indemnity pursuant to Rule [39.1](#), take insurance or pay the premiums on an insurance policy pursuant to Rule [39.2](#) even though the Director has a direct and material interest in the outcome of the resolution.

### **40. WINDING UP**

- (a) Subject to any Rights or restrictions attached to a class of shares, on a winding up of the Company, any surplus assets or profits of the Company remaining after the payment of its debts must be divided:
  - (i) among Members holding shares having Rights to participate in the division of any surplus assets or profits of the Company; and
  - (ii) proportionately to the numbers of shares held by each of those Members, but
  - (iii) if a Member holds partly paid shares the amount to be paid to them will be reduced pro rata.
  
- (b) Subject to any Rights or restrictions attached to a class of shares, on a winding up of the Company, a liquidator may, with the authority of a unanimous resolution of Members entitled to participate in the division of any surplus assets or profits of the Company:
  - (i) distribute among those Members the whole or any part of the property of the Company; and/or
  - (ii) decide how to distribute the property as between the Members or different classes of Members.

**SCHEDULE 1  
SHARE TRANSFER**

Company Name and ACN	
Description of Share(s) transferred	CLASS: <input type="checkbox"/> FULLY PAID  <input type="checkbox"/> PAID TO \$__
Number of Shares transferred	
Seller(s) Full Name	
Seller(s) Address	
Consideration	
Buyer(s) Full Name	
Buyer(s) Address	

I/We the Seller(s) for the above consideration transfer the shares specified above to the Buyer(s) subject to the conditions on which I/We held the shares at the time of signing and I/We the Buyer(s) agree to accept the shares subject to the same conditions and the Rules contained in the Company's Constitution.

I/We have not received any notice of revocation of the Power of Attorney by death of the grantor or otherwise, under which this transfer is signed (if any).

**All Sellers must sign**

**Signature**

Shareholder 1 (Individual)	Joint Shareholder 2 (Individual)	Joint Shareholder 3 (Individual)
Sole Director / Attorney / Authorised Person	Director / Company Secretary	Director

**All Buyers must sign**

**Signature**

Shareholder 1 (Individual)	Joint Shareholder 2 (Individual)	Joint Shareholder 3 (Individual)
Sole Director / Attorney /	Director / Company Secretary	Director Authorised Person

