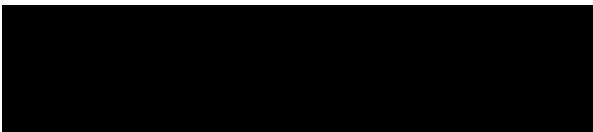


Constitution



Adopted on _____ 2021

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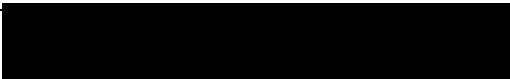
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Operative Terms

1 Dictionary

The meaning of terms used in this Constitution is set out below (unless the contrary intention appears).

Term	Meaning
Act	the <i>Corporations Act</i> 2001 (Cth)
Affiliate	<p>in relation to a person:</p> <ul style="list-style-type: none"> (a) an entity which the person Controls or which is under common Control with the person; (b) a Related Body Corporate of the person; (c) an Associate of the person; (d) a company in which the person beneficially owns 50% or more of the issued shares; (e) a self-managed superannuation fund of which the person is a member; (f) a trust of which the person is a beneficiary and from which the person has received 50% or more of the distributions from that trust in the previous three Financial Years; (g) a trust of which a Related Body Corporate of the person is the responsible entity, trustee, manager or investment adviser of the trust; (h) a trust of which the person is a responsible entity, trustee, manager or investment adviser of the trust; (i) a trust of which the person has Control of the responsible entity, trustee, manager or investment adviser of the trust; (j) a limited partnership whose general partner is a related body corporate of the person; (k) a general partnership all of whose general partners are related bodies corporate of the person; (l) if the person is a limited partnership, general partnership or a trust, a custodian of an asset or assets of the limited partnership, general partnership or trust;

Term	Meaning
	<p>(m) if the person enters into this Constitution a trustee of a trust, a replacement trustee of that trust; or</p> <p>(n) if the person is an individual, the spouse, former spouse, mother, father, brother, sister or child over the age of 18 of the person;</p>
Alternate Director	a person appointed as an alternate director under this Constitution
Associate	has the meaning given to it in the Corporations Act;
Auditor	the Company's auditor, if any
Board	the board of Directors of the Company from time to time
Business Day	any day that banks are generally open for business in South Australia but not a Saturday, Sunday or public holiday
Change of Control	<p>of a Shareholder means a change in the person who Controls, or persons who Control, that Shareholder, excluding any change where:</p> <p>(o) the entity that ceases to Control the Shareholder was, immediately beforehand, Controlled by a person that Controls and continues to Control the Shareholder; or</p> <p>(p) the entity that comes to Control the Shareholder is, immediately after the change, a wholly-owned subsidiary of a person that previously Controlled and continues to Control the Shareholder.</p>
Company	
Constitution	the constitution of the Company as amended from time to time
Control	<p>(q) of a corporation means the power (whether legally enforceable or not) to control, whether directly or indirectly, alone or with its Associates or Related Bodies Corporate:</p> <p>(i) the composition of its board of directors;</p> <p>(ii) the voting rights of the majority of its voting shares; or</p> <p>(iii) the management of its affairs (including where the board of directors of the corporation is accustomed to</p>

Term	Meaning
	act in accordance with the instructions, directions or wishes of the person);
	(r) of a trust means the power (whether legally enforceable or not) to control, whether directly or indirectly:
	(i) the appointment of any new or additional trustee of the trust;
	(ii) the removal of the trustee of the trust; and/or
	(iii) the management of the affairs of the trust;
CSF offer	has the same meaning as that term is defined in the Act
CSF shareholder	has the same meaning as that term is defined in the Act
Default Event	has the meaning given in clause 15.1 ;
Director	any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director
Directors	all or some of the Directors acting as a board
Dividend	includes bonus
Drag Along Notice	has the meaning given in clause 9.1 ;
Drag Consideration	has the meaning given in clause 9.1(c) ;
Encumbrance	any interest or power: <ul style="list-style-type: none"> (s) reserved in or over any interest in, any asset including any retentions of title; or (t) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or hypothecation (within the meaning of PPSA), by way of security for the payment of any debt or other monetary obligations or the performance of any other obligations and whether existing or agreed to be granted or created
Entity	has the same meaning as that term is defined in section 9 of the Act

Term	Meaning
Executive Director	a person appointed as an executive director under this Constitution
Exit Event	An IPO or a Trade Sale
Expert	a person selected by the Board who has at least 10 years valuation experience and is a senior employee at any of Deloitte, Ernst & Young, KPMG, PricewaterhouseCoopers or another internationally renowned chartered accountancy business, and who is independent of the Company and any of the Shareholders;
Fair Market Value	the value determined in accordance with clause 16 ;
Founder Member	
General Meeting	a general meeting of Members
Group	together, the Company and its wholly-owned Subsidiaries from time to time;
Group Company	any of the Company and each wholly-owned Subsidiary from time to time;
Independent Valuer	an independent chartered accountant or investment or merchant bank approved by the Board
Insolvency Event	<p>for any body corporate, the happening of one or more of the following events:</p> <ul style="list-style-type: none"> (u) except for the purpose of a solvent reconstruction or amalgamation which has the consent of the other parties: <ul style="list-style-type: none"> (i) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 21 days of it being filed; (ii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or (iii) a resolution that it be wound up is passed; (v) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;

Term	Meaning
	<p>(w) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;</p> <p>(x) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise, composition or assignment;</p> <p>(y) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;</p> <p>(z) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that such action be taken;</p> <p>(aa) it is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or is presumed to be insolvent under any applicable Law;</p> <p>(bb) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;</p> <p>(cc) it 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;</p> <p>(dd) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; and</p> <p>(ee) anything having a substantially similar effect to any of the events specified in paragraphs (u) to (dd) happens to it under any applicable Law; and</p> <p>for any individual, the happening of one or more of the following events:</p> <p>(ff) they have a bankruptcy notice issued against them;</p> <p>(gg) a receiver or a trustee for creditors or in bankruptcy is appointed to any of their property;</p>

Term	Meaning
	<p>(hh) a garnishee notice is given concerning any money that they are said to be owed;</p> <p>(ii) they propose to enters into an arrangement or composition with, or an assignment for the benefit of, any of their creditors;</p> <p>(jj) they propose or effect a moratorium involving any of their creditors;</p> <p>(kk) the stop or suspend, or threaten to stop or suspend, the payment of all or a class of their debts or the conduct of all or a substantial part of their business;</p> <p>(ll) they are unable to pay all of their debts as they fall due or are presumed to be insolvent under any applicable Law;</p> <p>(mm) the become 'insolvent under administration' as defined in section 9 of the Corporations Act;</p> <p>(nn) anything having a substantially similar effect to any of the events specified in paragraphs (ff) to (mm) happens to them under any applicable Law; and</p> <p>(oo) they die, are imprisoned or become incapable of managing their own affairs.</p>
IPO	an initial public offering of any class of equity securities by the Company (or a new holding company formed as a special purpose vehicle for the initial public offering) in conjunction with a listing or quotation of those equity Securities on the Australian Securities Exchange or any other Recognised Securities Exchange;
Managing Director	a person appointed as managing director under this Constitution
Market Value	the market value for each Share or other security in the Company as determined by an Independent Valuer having regard to all usual factors considered in valuing Shares
Member	a person entered in the Register or any branch register as the holder of Shares
Office	the Company's registered office
Permitted Transferee	in relation to a Shareholder means an Affiliate of the Shareholder;

Term	Meaning
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth)
Qualified Buyer	has the meaning given to that term in clause 8.7 ;
Qualifying Offer	an offer for 100% of the Shares received: <ul style="list-style-type: none"> (a) in writing; (b) from a bona fide third party buyer; and (c) on arm's length for not less than Market Value
Register	the register of Members of the Company
Registered Address	the last known address of a Member as noted in the Register
Related Body Corporate	a related body corporate as defined in the Act
Related Entity	<ul style="list-style-type: none"> (a) in relation to a corporation: <ul style="list-style-type: none"> (i) a Related Body Corporate; (ii) a director, secretary or natural person shareholder of the corporation; (b) in relation to a natural person: <ul style="list-style-type: none"> (i) a spouse, parent, sibling, child or grandchild of the person; (ii) a parent, sibling, child or grandchild of the spouse of the person; (iii) a company in which the person has a Controlling interest; (c) in relation to a corporation or a natural person, a trust of which the corporation or person is the trustee or a beneficiary

Term	Meaning
Relative	<p>in relation to a person means:</p> <ul style="list-style-type: none"> (a) each spouse of that person; (b) a descendant of that person; and (c) a descendant of a spouse of that person
Representative	a person authorised by a Member to act as its representative under this Constitution
Seal	the Company's common seal (if any)
Secretary	any person appointed by the Directors to perform any of the duties of a secretary of the Company
Securities	Shares and any preference shares, options, convertible notes, warrants or other securities convertible into Shares;
Shareholder	any entity that holds Shares and any permitted assignee or successor in title of them, and Shareholders means all of them
Shareholder Group	<p>in respect of a Shareholder:</p> <ul style="list-style-type: none"> (a) the Shareholder; and (b) any other Shareholder who elects to combine their Shares to form a Shareholder Group; <p>but for the avoidance of doubt each Shareholder may only be a member of one Shareholder Group, and which Shareholder Group has:</p> <ul style="list-style-type: none"> (c) nominated a Shareholder of the Shareholder Group to represent the Shareholder Group and send and receive communication on behalf of the Shareholder Group, and notified the Company in writing of such nomination; and (d) notified the Company in writing of the formation, existence (and disbanding if applicable) of such Shareholder Group and its members
Shareholder Proportion	<p>in respect of a Shareholder, a ratio determined as follows:</p> <p><u>The number of Shares held by that Shareholder</u> Total number of Shares on issue</p>

Term	Meaning
Shares	shares of the Company
Subsidiary	has the meaning given to that term by section 9 of the Corporations Act;
Trade Sale	<p>the sale (whether by way of a single transaction or a series of transactions) of:</p> <p>(a) the whole or a substantial part of the going concern of the Group; or</p> <p>(b) all or substantially all of the assets of the Company or the Group.</p>
Transfer	to sell, assign, transfer, convey or otherwise dispose of a legal or beneficial interest; and

2 Rules of interpretation

In this Constitution unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes any company, partnership, joint venture, association, other body corporate, any unincorporated body, any statutory body or other governmental authority, department or organisation or any other entity and vice versa;
- (e) a reference to a clause is to a clause of this Constitution;
- (f) a reference to a request or notice means a request or notice in writing;
- (g) a reference to a person includes the person's successors and permitted assigns;
- (h) a reference to this Constitution is to this Constitution as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Constitution;
- (i) a reference to any legislation or any provision of a statute includes;
 - (i) all regulations, proclamations, by-laws, ordinances, orders or instruments issued under that legislation or provision;

- (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision; and
- (iii) any substituted legislation or substituted provision;
- (j) a reference to conduct includes any omission, representation, statement or undertaking whether or not in writing;
- (k) mentioning anything after include, includes or including does not limit what else might be included;
- (l) a reference to a person that comprises two or more persons means those persons jointly and severally;
- (m) the headings are for convenience only and do not affect the interpretation of this Constitution;
- (n) a reference to a month means a calendar month;
- (o) any thing that is deemed to occur or required to be done by this Constitution on or by a day which is not a Business Day, is deemed to occur or must be done on or by the following Business Day;
- (p) a reference to dollars means Australian dollars;
- (q) a reference to time means Victoria, Australia time; and
- (r) an expression in a provision of this Constitution has the same meaning as in a provision of the Act that deals with the same matter as the provision.

3 Shares

3.1 Share rights

Subject to this Constitution, the terms of issue of Shares and the Act, all ordinary Shares attract the right to:

- (a) receive notice of and to attend and vote at all General Meetings at one vote per Share;
- (b) receive all Dividends, distributions and other profits; and
- (c) on a winding up of the Company, the right to participate equally with other holders of Shares of the same class in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on Shares.

3.2 Preference Shares

- (a) In addition to the rights referred to in **clause 3.1** and subject to the terms of issue of Shares, preference Shares attract the following rights, privileges, restrictions and conditions:

- (i) the right to a fixed or cumulative preferential Dividend at the rate specified or determined in the terms of issue of the preference Shares in priority to any payment of Dividend to the holders of all other classes of Shares;
 - (ii) on a reduction of capital or a winding up of the Company, the right to the return of capital in priority to all other classes of Shares; and
 - (iii) on a reduction of capital or a winding up of the Company, the right to participate equally with other Shareholders in any surplus assets or profits of the Company.
- (b) The Company may issue preference Shares which are redeemable. Subject to the provisions of the Act and the terms of issue of Shares, those Shares are liable to be redeemed at the option of the Company at any time and at their issued price.
- (c) Subject to the terms of this Constitution, the terms of issue of Shares and the Act, the Company may issue, or convert existing Shares into, Shares designated as '**Class A Redeemable Preference Shares**', which Shares have the rights set out in **Annexure 1** to this Constitution.

3.3 Issue

- (a) Subject to this Constitution and the Act, the Directors may issue or dispose of Shares to persons on such terms, at such issue prices, of such classes and at such times as determined by the Directors.
- (b) If the terms of this Constitution have been adopted by the Company in replacement of a previous Constitution, Articles of Association or Memorandum of Association, the adoption of this Constitution will not of itself result in any change to the nominal value of or any rights, privileges, restrictions or conditions attaching to any Shares issued by the Company before the adoption of this Constitution.

3.4 Buy-backs

Subject to the Act, the Company may buy back Shares on terms and at times determined by the Directors.

3.5 Commission and brokerage

- (a) Subject to the Act, the Directors may pay brokerage or commission to a person in respect of the taking up of Shares.
- (b) Such brokerage or commission may be satisfied by the payment in cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of these methods.

3.6 Trusts

Except as required by law, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share (even if the Company has notice of the relevant trust, interest or right) except the registered holder's absolute right of ownership.

3.7 Joint holders

- (a) If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- (b) Any one of the joint holders of a Share may give effectual receipts for any Dividend, distribution or other profit payable to the joint holders.

3.8 Certificate

- (a) Subject to the conditions of issue of any Shares or any class of Shares:
 - (i) every Member is entitled free of charge to one certificate for all Shares registered in its name; and
 - (ii) a Member may request several certificates in reasonable denominations for different portions of its holding.
- (b) Subject to the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding.
- (c) Every certificate for Shares must be issued and despatched in accordance with the Act.

3.9 Lost certificates

If it is proved to the satisfaction of the Directors that a certificate is lost, worn out or defaced, the Directors may cancel such certificate and replace it with a new certificate (marked as such), subject to such indemnity as the Directors may require.

3.10 Variation of rights

- (a) The rights attached to any class of Shares may, unless their terms of issue state otherwise, be varied or cancelled by a special resolution of the Company and:
 - (i) with the written consent of the holders of 75% of the Shares of that class; or
 - (ii) by a special resolution passed at a separate General Meeting of the holders of Shares of that class.
- (b) The provisions of this Constitution relating to General Meetings apply to separate Share class meetings as if they were General Meetings except that:
 - (i) a quorum is:
 - (A) two persons holding or representing by proxy, at least one-third of the Shares of that class; or
 - (B) if there is one holder of Shares in that class, that holder; and

- (ii) any holder of Shares of that class, present in person or by proxy, may demand a poll.
- (c) The rights conferred on the holders of Shares which are not ordinary Shares and which have preferential or other special rights will, unless otherwise expressly provided by their respective terms of issue, be taken to be varied by:
 - (i) the issue of more Shares; or
 - (ii) the conversion of securities to new securities,
 which rank equally with or in priority to those Shares.

3.11 Calls

3.11.1 Calls

- (a) Subject to the terms on which Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.
- (b) No call will be payable less than one month from the making of the call.
- (c) A call may be required to be paid in instalments.
- (d) A call is made when the resolution of the Directors authorising it is passed.
- (e) The Directors may revoke or postpone a call before its due date for payment.
- (f) At least 14 Business Days before the due date for payment of a call the Company must send to Members on whom the call is made a notice specifying the following:
 - (i) the amount of the call;
 - (ii) the due date for payment;
 - (iii) the place for payment; and
 - (iv) the consequences of non-payment of the call.
- (g) A Member to whom notice of a call is given in accordance with this **clause 3.11** must pay to the Company the amount called in accordance with the notice.
- (h) Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.
- (i) Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

3.11.2 Interest on unpaid amounts

If an amount called is not paid on or before the due date, the holder of the Shares will pay (subject to the Directors' discretion):

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment.

3.11.3 Payment of calls in advance

- (a) The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called. The Company may:
 - (i) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
 - (ii) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.
- (b) Payment of an amount in advance of a call does not entitle the paying Member to any Dividend, distribution, other profit, benefit or advantage, other than the payment of interest under this **clause 3.11.3**, to which the Member would not have been entitled if it had paid the amount when it became due.

3.12 Liens

- (a) The Company has a first and paramount lien on every partly paid Share for all money due and unpaid to the Company at a fixed time, in respect of the Share, presently payable by the holder of the Share, or the holder's estate, to the Company in respect of the Share or which the Company is required by law to pay in respect of the Share.
- (b) The Company's lien extends to all Dividends, distributions and other profit payable in respect of the Share.
- (c) Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- (d) The Directors may declare a Share to be wholly or partly exempt from a lien.
- (e) If any law of any country purports to impose an immediate or contingent liability upon the Company to make any payment or authorises a taxing authority or government official to require the Company to make payment in respect of Shares or Dividends or other moneys accruing or due to the Member, then:
 - (i) the Member will indemnify the Company in respect of any such payment or liability; and
 - (ii) the Company:
 - (A) will have a lien on the Shares, Dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly, in respect of any payment made or liability incurred by the Company, together with reasonable interest on any payment made by the Company at a rate to be fixed by the

Directors (not exceeding 20% per annum) from the date of payment by the Company to the date of repayment by the Member;

- (B) may set off amounts so paid by the Company against amounts payable by the Company to the Member as Dividends or otherwise; and
 - (C) may recover as a debt due from the Member or the Member's legal personal representative the amount of all payments made by the Company together with interest at the rate and for the period referred to in **clause 3.12(e)(ii)(A)**.
- (f) If the Company has a lien on a Share for money presently payable and the Company has given the Member who holds the Share written notice demanding payment of the money, then 14 or more days after giving the notice, the Directors may sell the Share (provided the money has not been paid) in any manner determined by them.

3.13 Forfeiture notice

- (a) The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay the unpaid amount, any interest that has accrued on that amount and all expenses incurred by the Company as a consequence of the non-payment.
- (b) The notice under **clause 3.12(a)** must:
 - (i) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
 - (ii) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

3.14 Forfeiture

- (a) If a Member does not comply with a notice served under **clause 3.13**, then any or all of the Shares in respect of which the notice was given may be forfeited pursuant to a resolution of the Directors together with unpaid Dividends in respect of forfeited Shares.
- (b) On forfeiture, Shares become the property of the Company and, subject to the Act, forfeited Shares may be sold, disposed of, or cancelled on terms determined by the Directors.
- (c) The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on terms and conditions determined by them in their absolute discretion.
- (d) On forfeiture, the interest of a person who held Shares which are the subject of the forfeiture is extinguished.

- (e) After a Share has been forfeited notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture and the forfeiture and its date must be noted in the Register.

3.15 Liability

- (a) Upon forfeiture, the holder of the forfeited Shares remains liable to pay to the Company:
 - (i) all money (including interest and expenses) that was payable by it to the Company at the date of forfeiture in respect of the forfeited Shares; and
 - (ii) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).
- (b) The liability to the Company of a former holder of forfeited Shares ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the person in respect of the forfeited Shares.

3.16 Forfeiture and sale

- (a) The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the forfeited Share and may execute a transfer of the forfeited Share in favour of a person to whom the forfeited Share is sold or disposed of.
- (b) The purchaser of a forfeited Share is not bound to check the regularity of the sale or the application of the purchase price and obtains title to the forfeited Share despite any irregularity in the sale and will not be subject to complaint or remedy by the former holder of the forfeited Share in respect of the purchase.
- (c) A statement signed by a Director and the Secretary that the forfeited Share has been regularly forfeited and sold or re-issued, or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the forfeited Share.
- (d) The net proceeds of any sale made to enforce a lien or a forfeiture must be applied by the Company in the following order:
 - (i) first, in payment of the costs of the sale;
 - (ii) secondly, in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
 - (iii) thirdly, in payment of any surplus to the former Member whose Share was sold.

4 Pre-emptive Rights on New Issues

4.1 Issue Offer

- (a) Subject to **clause 5**, each issue of Securities must first be offered to the Shareholders in their Shareholder Proportions, but without involving fractions ('Issue Offer'). Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.
- (b) Each Issue Offer must specify:
 - (i) the total number of Securities available for subscription;
 - (ii) the number of Securities being offered to that Shareholder;
 - (iii) the type of Securities being offered;
 - (iv) the terms of issue of the Securities, including the price per Security;
 - (v) the issue date for the Securities (which must be at least 20 business days after the Issue Offer is given);
 - (vi) the time within which the Issue Offer may be accepted (which must end no less than 20 business days after the Issue Offer is given and at least five business days before the issue date for the Securities); and
 - (vii) that if the Issue Offer is not accepted by a Shareholder within that time or is rejected, the Directors may in their discretion issue those Securities not accepted by the Shareholder in accordance with this **clause 4**.

4.2 Response to Issue Offer

Each Shareholder must, by the time stated in the Issue Offer, give the Company notice stating:

- (a) whether it accepts or rejects in full the offer made in the Issue Offer; and
- (b) if it wishes to subscribe for more Securities than have been offered to it, the additional number of Securities for which it seeks to subscribe.

4.3 Failure to respond

No Shareholder is obliged to subscribe for Securities in connection with an Issue Offer. If a Shareholder fails to respond to an Issue Offer by the time stated in the Issue Offer, they will be deemed to have rejected in full the Issue Offer made to them.

4.4 Issue Offers not accepted

- (a) If an Issue Offer is not accepted in full, the Directors may issue those remaining Securities to those Shareholders who have applied to subscribe for more Securities than they were offered (and if there is competition between them, on a pro rata basis between them, based on their existing Shareholder Proportions), but on the

basis that no Shareholder will be required to subscribe for more than the additional number of Securities specified in its notice under **clause 4.2**. This process is to be repeated until such time as each Shareholder has been allotted their requested additional Securities or there are no Securities remaining to be allotted from the Issue Offer.

- (b) If, after completing the allotment under **clause 4.4(a)** any Securities have not been issued, the Directors may within three months after making the first Issue Offer, issue those remaining Securities to any person (whether or not a Shareholder). Those remaining Securities must be issued on no more favourable terms (to the offeree) than those set out in an Issue Offer.

4.5 Subscription by accepting Shareholders

If a Shareholder accepts Securities as part of an Issue Offer, that Shareholder must subscribe for the number of Securities accepted on the terms specified in the Issue Offer.

5 Exempted Issues

The Company may issue Securities without complying with the procedure in **clause 4** ('Exempted Issue') in the following circumstances:

- (a) the Exempted Issue is an issue of Securities to an employee, officer or contractor of the Company pursuant to a properly authorised and adopted employee share scheme or employee share option plan which has been approved by the Board;
- (b) the Exempted Issue is an issue of Securities under a share split or other reorganisation of the Company which has been approved by the Board;
- (c) the Exempted Issue is an issue of Securities as payment for an acquisition by the Company;
- (d) the Exempted Issue is an issue of Securities as part of an Exit Event, which has been approved by the Board; or
- (e) the Exempted Issue relates to the issue of Securities on conversion of any Security in the Company or exercise of any Securities.

6 Restrictions on Transfers

- (a) No Shareholder may Transfer Securities where to do so would likely result in a breach of any law or result in any material adverse effect occurring under any law relating to the Company.
- (b) In addition to **clauses 6(a)** and this **clause 6(b)** and any other existing restriction under this Constitution, a Shareholder who proposes to Transfer Securities must comply with **clause 8** (Pre-emptive rights on Transfers) unless:
 - (i) the Transfer is in accordance with **clause 7** (Permitted Transfers);

- (ii) the Transfer is permitted or required under **clause 9** (Drag along right), subject to **clause 9.2**;
 - (iii) the Transfer is undertaken under **clause 15** (Default Events);
 - (iv) the Transfer is approved by Unanimous Board Resolution; or
 - (v) the Transfer is made pursuant to an Exit Event, which has been approved by the Board.
- (c) No Shareholder may create any Encumbrance over any Securities that they hold.

7 Permitted Transfers

- (a) Subject to transferee consenting in writing (and duly signed) to be bound by the terms of this Constitution:
 - (i) a Shareholder may Transfer Securities to a Permitted Transferee without complying with **clause 8**; and
 - (ii) a Permitted Transferee may Transfer Securities to another Permitted Transferee of the original Shareholder (**'Relevant Shareholder'**) without complying with **clause 8**.
- (b) If a Permitted Transferee (**'Original Permitted Transferee'**) to whom Securities have been transferred under **clause 7(a)** ceases to be a Permitted Transferee of the Relevant Shareholder that Original Permitted Transferee must, within five business days of so ceasing, transfer all of those Securities to:
 - (i) the Relevant Shareholder; or
 - (ii) another Permitted Transferee of the Relevant Shareholder.

8 Pre-emptive rights on Transfers

8.1 Transfer Notice

If a Shareholder wants to Transfer Securities (other than as otherwise allowed by **clauses 6(b)(i) to 6(b)(v)** of this Constitution), the Shareholder (**'Seller'**) must give each other Shareholder (**'Offeree'**) notice (**'Transfer Notice'**) stating:

- (a) the class and number of Securities proposed to be Transferred (**'Sale Securities'**);
- (b) the cash price per Sale Security (**'Specified Price'**);
- (c) the name of the transferee (if known); and
- (d) any other terms of sale of the Sale Securities, including any warranties and terms required to give effect to **clauses 8.8**.

Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.

8.2 Pre-emption

Each Offeree may buy a number of the Sale Securities calculated in accordance with the following formula:

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

Where:

- 'N' = the number of Sale Securities the Offeree must be offered.
- 'A' = the total number of Sale Securities.
- 'B' = the number of Shares held by the Offeree.
- 'C' = the total number of Shares held by all Shareholders as at the date of the Transfer Notice; and
- 'D' = the number of Shares held by the Seller, including the Sale Securities.

8.3 Response to Transfer Notice

Within 10 business days after receiving a Transfer Notice ('Offer Period'), each Offeree must give the Seller notice stating:

- (a) whether it accepts or rejects in full or in part the offer made in the Transfer Notice; and
- (b) the number of Sale Securities which the Offeree will be prepared to buy (which may be a number greater than their entitlement under **clause 8.2**).
- (c) The Offeree must give the Board a copy of its notice to the Seller.

8.4 If Offerees agree to buy Sale Securities

If the Offerees together accept the offer made in the Transfer Notice for all the Sale Securities then those Offerees who accepted the offer ('Buyers') are deemed to have unconditionally agreed to buy, and the Seller is deemed to have agreed to unconditionally sell, the Sale Securities allocated as follows:

- (a) first, each Offeree that agreed to buy up to or equal to the number of Sale Securities to which they were entitled under **clause 8.2**, will be allocated the number of Sale Securities that they agreed to buy;
- (b) next, each Offeree that agreed to buy more than the number of Sale Securities to which they were entitled under **clause 8.2**, will be allocated:

- (i) first, the number of Sale Securities to which they were entitled under **clause 8.2**; and
- (ii) then such further number of Sale Securities from those that remain that represent the same proportion that (a) the number of Sale Securities that they notified under **clause 8.3(b)** represents to (b) the total number of Sale Securities notified by all Offerees under **clause 8.3(b)**.

8.5 If Offerees do not agree to buy Sale Securities

If the Offerees do not together within the Offer Period accept the offer made in the Transfer Notice for all the Sale Securities, the Seller must, within five business days after the end of the Offer Period ('**Notification Date**') give notice to the Offerees either:

- (a) withdrawing each Transfer Notice and the offers made; or
- (b) confirming that the Seller wishes to proceed with the sale:
 - (i) to those Offerees that have accepted the offer in the Transfer Notice for:
 - (A) the lower of the number of Sale Securities that they have agreed to buy and the number of Sale Securities to which they are entitled under **clause 8.2**; and
 - (B) then such further number of Sale Securities from those that remain that represents the same proportion that (a) the number of Sale Securities that they notified under **clause 8.3(b)** represents to (b) the total number of Sale Securities notified by all Offerees under **clause 8.3(b)**; and
 - (ii) for any remaining Sale Securities, to a third party that is not an Affiliate of the Seller ('**Third Party**'), subject to **clause 8.6** and **clause 9**; or
- (c) if the Transfer Notice was deemed to be served as a result of the service of a Drag Along Notice under **clause 9**, confirming that completion of the Transfer of the Dragged Securities (as defined in **clause 9**) must take place on the same date as the completion of the sale to the Proposed Purchaser (as defined in **clause 9**) of the Securities held by each Majority Holder (as defined in **clause 9**).

8.6 Sale to a Third Party

Any sale by a Seller to a Third Party pursuant to **clause 8.5**:

- (a) will be subject to the Seller demonstrating to the reasonable satisfaction of the Offerees that the Third Party is a Qualified Buyer; and
- (b) must occur:
 - (i) within 60 business days after the Offer Period expires;
 - (ii) at a price per Security not less than the Specified Price; and

- (iii) on terms no more favourable to the Third Party than those offered in the Transfer Notice.

8.7 Qualified Buyer

Qualified Buyer will mean a buyer that, in the reasonable opinion of the Board acting by Simple Resolution, has the following characteristics:

- (a) it is not a material competitor of the Group or any of the Offerees;
- (b) it values and supports the culture and vision of the Group; and
- (c) it has the necessary financial resources to meet its obligations as a Shareholder of the Company.

8.8 Sale terms

The sale of Securities under this **clause 8** will occur on the following terms:

- (a) the Purchase Price will be the Specified Price or the price nominated in the Sale Notice, as the case may be; and
- (b) completion of the sale and purchase of the Securities will occur 60 days after the final offer is accepted, at which time the Seller (and each Last Right Offeree that served a Last Right Notice) must Transfer full legal and beneficial title to the Securities it is selling to the buyer free from Encumbrance.

8.9 No revocation

Subject to **clauses 8.5** and **9**, a Transfer Notice or a Sale Notice cannot be revoked or withdrawn after it is given by a Shareholder, except with approval of all other Shareholders.

9 Drag along right

9.1 Drag Along Notice

If a Shareholder or group of Shareholders that together have a Shareholder Proportion of more than 50% (**'Majority Holders'**) receives an offer on arm's length terms from a person that is not an Associate or Affiliate of a Shareholder but is a bona fide third party purchaser (**'Proposed Purchaser'**) to purchase all of the Share Capital and the Majority Holders wish to transfer all their Securities to that Proposed Purchaser, then the Majority Holders may give a notice (**'Drag Along Notice'**) to all the other Shareholders (**'Dragged Shareholders'**) specifying:

- (a) that the Dragged Shareholders are required to transfer all of their Securities (**'Dragged Securities'**) under this **clause 9** to the Proposed Purchaser;
- (b) the name and address of the Proposed Purchaser;
- (c) the consideration per Security (or class of Security) payable for the Dragged Securities (**'Drag Consideration'**);

- (d) the proposed date of Transfer of the Dragged Securities; and
- (e) all other material terms and conditions on which the Dragged Securities are to be transferred.

9.2 Pre-emptive rights

A Drag Along Notice under this **clause 9** will be deemed to be a Transfer Notice in respect of each Majority Holder's Securities (on the terms set out in the Drag Along Notice) for the purposes of the pre-emptive rights set out in **clause 8** and the provisions in **clauses 8.4** and **8.5** will apply, provided however that the sale to the Dragged Shareholders will not complete unless those Dragged Shareholders together accept in full the offer deemed to be made in the Transfer Notice. The remaining provisions in this **clause 9** will only apply if the Dragged Shareholders do not together accept in full the offer deemed to be made in the Transfer Notice constituted by the Drag Along Notice pursuant to this **clause 9**.

9.3 Lapsing of Drag Along Notice

- (a) A Drag Along Notice is irrevocable, but will lapse if all of the Securities are not transferred to the Proposed Purchaser within 60 business days after the date of service of the Drag Along Notice.
- (b) The Majority Holders may serve further Drag Along Notices following the lapse of any Drag Along Notice.

9.4 Consideration for Dragged Securities

The consideration payable by the Proposed Purchaser for each class of Dragged Securities must be the same in value, on a per security basis, as payable by the Proposed Purchaser to the Majority Holders in respect of Securities in that class.

9.5 Completion of the sale

Completion of the Transfer of the Dragged Securities must take place on the same date as the completion of the sale of the Securities held by each Majority Holder.

9.6 Application to New Shareholders

If any person (other than a Proposed Purchaser), following the issue of a Drag Along Notice, becomes a Shareholder, whether pursuant to the exercise of pre-existing options to acquire Shares or otherwise ('**New Shareholder**'), then:

- (a) a Drag Along Notice will be deemed to have been served on the New Shareholder on the same terms as the previous Drag Along Notice; and
- (b) each such New Shareholder will be required to sell Securities acquired by it to the Proposed Purchaser (or such person as the Proposed Purchaser directs) and the provisions of this **clause 9** will apply, with appropriate changes, to the New Shareholder.

9.7 Warranties on Transfer of the Dragged Securities

The Dragged Shareholders must, if requested by the Majority Holders:

- (a) represent and warrant to the Proposed Purchaser that they are the legal owners of the Dragged Securities and have full power and authority to Transfer the Dragged Securities free of any Encumbrances; and
- (b) provide any other representations or warranties to the Proposed Purchaser that the Majority Holders reasonably require, provided that:
 - (i) the Dragged Shareholders must not be required to give any warranty unless the identical (or equivalent, where applicable) warranty is also given to the Proposed Purchaser by the Majority Holders;
 - (ii) each Dragged Shareholder must be given reasonable opportunity to qualify or disclose against any warranties it is required to give; and
 - (iii) the Dragged Shareholder must have the benefit of all protections from Claims by the Proposed Purchaser which are afforded to the Majority Holders, including but limited to any liability caps (which must be applied on a pro-rata basis) and exclusions.

9.8 Liability

The liability of each Majority Holder and any Dragged Shareholder to the Proposed Purchaser in connection with any applicable warranty, representation, indemnity, obligation, escrow, holdback, retention or similar provision will be several (and not joint or joint and several) and will (other than in respect of title and capacity warranties) be pro rata based on the consideration received by each Majority Holder and any Dragged Shareholder.

10 Transfers

10.1 Transfer

- (a) Subject to this Constitution, a Member may transfer their Shares by a written transfer instrument in a form approved by the Directors.
- (b) A transfer of Shares by a Member must be executed by or on behalf of the transferor and the transferee.
- (c) A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares. A transfer of Shares does not pass the right to any unpaid Dividends or any Dividends declared on the Shares until registration.
- (d) A Member may not transfer a Share unless:
 - (i) each requirement prescribed by **clause 10.2** is first satisfied; or
 - (ii) the Members other than the Member proposing to transfer the Share unanimously waive or modify those requirements.

10.2 Transfer procedure

- (a) For a transfer of Shares the written transfer instrument must be left at the Office or the office of the Register, together with any fee the Directors require. The transfer must be accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate and any evidence required by the Directors of the transferor's right to transfer the Shares.
- (b) Subject to the powers vested in the Directors by this Constitution, the Company must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

10.3 Right to refuse registration

The Directors may, in their absolute discretion and subject to the Act:

- (a) decline (without assigning any reason) to register any transfer of Shares or other securities unless it is a transfer made under **clause 3.14**; or
- (b) refuse to register any transfer of Shares or other securities on which stamp duty is payable but unpaid.

10.4 Closure of Register

The transfer books and the Register may be closed for up to 30 days in each year.

10.5 Title on death

- (a) The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (b) If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (c) The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- (d) The Company may register a transfer to a transferee who dies before the transfer is registered.

10.6 Transmission of Shares

- (a) Subject to the *Bankruptcy Act 1966* (Cth), any person who becomes entitled to a Share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Directors evidence of their entitlement which is satisfactory to the Directors, elect to be registered as the holder of the Share or transfer the Share to a person nominated by them.
- (b) If the person who has become entitled to a Share elects to be registered as the holder, then that person must deliver or send to the Company a written notice of

election signed by them. If the person who has become entitled to a Share elects to transfer the Share, then that person must execute a transfer of the Share and such person is entitled to the Dividends and other rights of the registered holder of the Share.

- (c) An election to be registered as a holder of a Share under **clause 10.6(a)** or transfer a Share from a Member or deceased Member under this **clause 10.6** is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member itself.
- (d) Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.
- (e) Any person who is registered under this **clause 10.6** must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person or transferring a Share.

10.7 Dealing with Share fractions

For the purpose of giving effect to a conversion of all or any of the Shares into a larger or smaller number of Shares, the Directors may settle any difficulty which arises as they think expedient and in particular may:

- (a) issue fractional certificates;
- (b) vest any fractions of shares in trustees on such trusts for the persons entitled to the fractions of Shares as may seem expedient to the Directors; and
- (c) sell the Shares representing the fractions for the best price reasonably obtainable to any person and distribute the net proceeds of sale (subject to retention by the Company of small amounts where the cost of distribution would be disproportionate to the amounts involved) in due proportion among those Members. For such a sale, any Director may execute an instrument of transfer of the Shares to the purchaser.

11 General Meetings

11.1 Convening General Meeting

- (a) Any Director may, at any time, convene a General Meeting.
- (b) The Directors will, upon a request from a Member, convene a General Meeting in accordance with section 249D of the Act.
- (c) Annual General Meetings of the Company are to be held in accordance with the Act.

11.2 Notice

- (a) Subject to the provisions of this Constitution and the Act allowing General Meetings to be held with shorter notice, at least 21 days written notice of any General

Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members and Directors.

- (b) A notice convening a General Meeting:
 - (i) must specify the place, date and time of the meeting;
 - (ii) must, if the meeting is to be held in two or more places, specify the technology that will be used;
 - (iii) must state the general nature of the business to be transacted at the meeting; and
 - (iv) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- (c) A notice of an annual General Meeting need not state that the business to be transacted at the meeting includes:
 - (i) the consideration of accounts and the reports of the Directors and Auditor;
 - (ii) the election of Directors in the place of those retiring; or
 - (iii) the appointment and fixing of the remuneration of the Auditor.
- (d) The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under **clause 11.1(b)**) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- (e) The failure or accidental omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

11.3 Member

In **clauses 11.4, 11.5, 11.6 and 11.7**, 'Member' includes a Member present in person or by proxy, attorney or Representative.

11.4 Quorum

- (a) No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum of Members is two Members unless there is only one Member, when a quorum is that Member.
- (c) If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
 - (i) if the meeting was convened on the requisition of Members, it is automatically dissolved; or

- (ii) in any other case:
 - (A) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (B) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, it is automatically dissolved.

11.5 Chair

- (a) The chair of Directors' meetings will be the chair at every General Meeting.
- (b) If there is no chair or the chair is not present within 15 minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting the Members present may elect a chair.
- (c) If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

11.6 Adjournment

- (a) The chair may, with the consent of any General Meeting at which a quorum is present, and will, if directed by a meeting at which a quorum is present, adjourn the meeting.
- (b) An adjourned General Meeting may take place at a different venue to the initial meeting.
- (c) The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- (d) If a General Meeting has been adjourned for more than 21 days, at least three Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

11.7 Resolutions

- (a) Subject the Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
 - (i) the chair;
 - (ii) at least three Members entitled to vote on the resolution; or
 - (iii) Members with at least five percent of the votes that may be cast on the resolution on a poll.

- (c) If there is an equality of votes the chair has a second or casting vote in addition to the chair's votes as a Member, proxy, attorney or Representative.
- (d) Unless a poll is demanded a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (e) A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.

11.8 Taking a poll

- (a) A poll will be taken in the manner that the chair directs.
- (b) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (c) The chair may determine any dispute about the admission or rejection of a vote.
- (d) The chair's determination, if made in good faith, will be final and conclusive.
- (e) A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.
- (f) After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

11.9 Members' voting rights

- (a) Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
 - (i) every Member may vote;
 - (ii) subject to **clause 11.9(b)**, on a show of hands every Member has one vote; and
 - (iii) on a poll every Member has one vote for each fully paid Share.
- (b) A Member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Member in respect of Shares have been paid.
- (c) If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

- (d) An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- (e) An objection must be referred to the chair of the General Meeting, whose decision is final.
- (f) A vote which the chair does not disallow pursuant to an objection is valid for all purposes.
- (g) A person who has satisfied the Directors not less than 24 hours before a General Meeting that it is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a General Meeting, as if the person were the registered holder of the Share.
- (h) If a Member appoints one proxy, that proxy may vote on a show of hands but if a Member appoints two proxies, neither proxy may vote on a show of hands.
- (i) A proxy may demand or join in demanding a poll.

11.10 Proxy appointment

- (a) A Member that is a natural person may appoint one or two proxies by a written appointment signed by the appointor or the appointor's attorney.
- (b) A Member that is a corporation may appoint one or two proxies by a written appointment under the appointor's common seal or signed by a director, secretary or attorney of the appointor.
- (c) A proxy need not be a Member.
- (d) If a Member appoints two proxies and the appointment does not specify the proportion of the appointor's voting rights to be exercised by each proxy, each proxy may exercise one-half of the votes.
- (e) An appointment of a proxy must be in a form approved by the Directors and the following form will be taken to be approved by the Directors unless they resolve to use a different form:

Tasmanian Islands Pty Ltd

*I/We of
 being
 a member/members of the abovenamed Company, hereby appoint
 of
 or
 failing him,..... of
, as
 my/our proxy to vote for me/us on my/our behalf at the general
 meeting of the Company, to be held on the day of
, and at any adjournment thereof.*

Signed this day of

*This form is to be used *in favour of / *against the resolution.*

** Strike out whichever is not desired. (Unless otherwise instructed,
 the proxy must vote as he is directed.)'*

- (f) An instrument appointing a proxy will be valid if it contains the following information:
 - (i) the Member's name and addresses;
 - (ii) the Company's name;
 - (iii) the proxy's name or the office held by the proxy; and
 - (iv) the meetings at which the proxy may be used.
- (g) An appointment of a proxy may be a standing appointment.
- (h) An undated proxy will be taken to be dated on the day that it is received by the Company.
- (i) A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.
- (j) A proxy's appointment is valid at an adjourned meeting.

11.11 Deposit of proxy instruments

The instrument appointing a proxy or attorney (if any) must not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, be:

- (a) deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or

- (b) be transmitted to a facsimile number at the office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

11.12 Validity of proxy votes

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor dies, becomes of unsound mind, revokes the proxy or power or transfers the Shares in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Company before the relevant meeting or adjourned meeting.

11.13 Representatives of corporations

- (a) Any Member which is a corporation may authorise a natural person to act as its Representative at any General Meeting of the Company or any class of Members. If a Member corporation does so its Representative may exercise at the relevant General Meeting all the powers which the Member corporation could exercise if it were a natural person. When its Representative is present at a meeting, the Member corporation will be considered to be personally present at the meeting.
- (b) The chair of a General Meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chair his or her status as a Representative within a period prescribed by the chair of the General Meeting.

11.14 Written resolutions

- (a) Subject to the Act, if all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by a Member.
- (b) For the purposes of **clause 11.14(a)**, two or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.
- (c) Any document referred to in this **clause 11.14** may be in the form of a facsimile transmission.
- (d) If the Company has one Member, a resolution may be passed by the Member recording it and signing the record.

12 Directors

12.1 Number

- (a) Each Director must be a natural person.
- (b) Subject to **clause 12.1(c)**, there will not be less than one Director.

- (c) During such time the Company has one or more CSF Shareholders and subject to the Act, the Company must have at least two Directors (or such other minimum number prescribed by the Act).
- (d) A Director or an Alternate Director is not required to be a Member.
- (e) The Company in General Meeting may, subject to this Constitution and the Act:
 - (i) appoint and remove Directors;
 - (ii) increase or reduce the number of Directors in office; and
 - (iii) determine in what rotation the increased or reduced number is to go out of office.
- (f) The Directors may appoint (and remove or replace) any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- (g) No person (other than a retiring Director) is eligible for election as a Director at any General Meeting unless a consent to nomination signed by the person has been lodged at the Office at least:
 - (i) in the case of a person recommended for election by the Directors, 20 Business Days before such General Meeting; and
 - (ii) in any other case, 30 Business Days before such General Meeting.

12.2 Initial Directors

The initial Directors are André Eikmeier and Eliza Kate Gower.

12.3 Appointment of Directors

- (a) The Founder Member may appoint, remove or replace one Director for so long as it (or together with its Affiliates) remains a Member. As at the date of adoption of this Constitution, for the purposes of this clause, the Founder Member appoints André Eikmeier as its nominee Director.
- (b) Any other Member that holds at least 20% or more of the total issued Shares may appoint, remove, or replace one Director by giving written notice to the Company.

12.4 Ordinary residence of Directors

- (a) Subject to **clause 12.4(b)**, at least one Director must ordinarily reside in Australia.
- (b) For such time as the Company has one or more CSF shareholders, and during such time that a Company is making a CSF offer:
 - (i) if there are only two Directors: at least one of them must ordinarily reside in Australia; and

- (ii) if there are more than two Directors: the majority of all Directors (or such other number prescribed by the Act) appointed (disregarding Alternate Directors) must ordinarily reside in Australia.

12.5 Period of office

A Director will continue to hold office until he or she dies or until his or her office is vacated pursuant to **clause 12.6**.

12.6 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Act from continuing as a Director;
- (b) is found to be a lunatic or becomes of unsound mind;
- (c) relocates their primary residence to outside Australia after ordinarily residing within Australia, causing a breach of **clause 12.4**;
- (d) resigns by notice in writing to the Company; or
- (e) is removed by a resolution of the Company.

12.7 Remuneration

- (a) The Directors (other than the Managing Director or an Executive Director) may be paid as remuneration for their services the aggregate maximum sum from time to time resolved by the Company.
- (b) The Directors' remuneration is deemed to accrue from day to day.
- (c) The remuneration will be divided between the non-executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally.
- (d) If a non-executive Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, then the Company may pay the Director a fixed sum determined by the Directors and such payment may be either in addition to or in substitution for the Director's remuneration under **clause 12.7(a)**.
- (e) Non-executive Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or otherwise in connection with the Company's business.
- (f) The remuneration of a Managing Director or of an Executive Director may from time to time be fixed by the Directors.
- (g) Subject to the Act, the Directors may:
 - (i) pay a gratuity, pension or allowance, on retirement or other vacation of office, to a Director or to any relative of a Director; and

- (ii) make contributions to any fund and pay any premiums for the purchase or provision of any such gratuity, pension or allowance.

12.8 Management

The management of the business of the Company is vested in the Directors who may exercise all such powers as the Company may by this Constitution and the Act be permitted to exercise provided such powers are not required to be exercised by the Company in General Meeting.

12.9 Borrowing powers

Without limiting the generality of **clause 12.8**, the Directors may at their discretion:

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

12.10 Directors' meetings

- (a) The Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) The Secretary must on the request of a Director, convene a Directors' meeting.
- (c) It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary reasonably believes to be outside Australia.
- (d) A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. A Director who participates in a meeting held in accordance with this **clause 12.10(d)** is taken to be present and entitled to vote at the meeting.
- (e) **Clause 12.10(d)** applies to meetings of Directors' committees as if all committee members were Directors.
- (f) At a meeting of Directors, a quorum is two Directors unless the Company has only one Director, when the quorum is that Director.

12.11 Decision making

- (a) Subject to this Constitution, questions arising at a meeting of Directors will be decided by a majority of votes of the Directors present and voting. If there is an equality of votes the chair of a meeting has a second or casting vote in addition to the chair's vote as a Director.

- (b) An Alternate Director has one vote for each Director for whom he or she is an alternate in addition to any vote he or she also has as a Director.

12.12 Directors' interests

- (a) A Director and any firm, body or entity in which a Director has a direct or indirect interest may:
 - (i) enter into any contract or arrangement with the Company;
 - (ii) be appointed to and hold any office or place of profit under the Company, other than the office of Auditor;
 - (iii) act in a professional capacity, other than as Auditor, for the Company; and
 - (iv) receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.
- (b) Each Director must disclose his or her interests to the Company in accordance with the Act. The Secretary must record all such declarations in the minutes.
- (c) A Director's failure to make disclosure under this **clause 12.12** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

12.13 Alternate Directors

- (a) A Director may appoint any person as his or her alternate for a period determined by that Director and may revoke any such appointment.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- (c) An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (d) An Alternate Director is not required to hold any Share.
- (e) An Alternate Director is an officer of the Company and is not an agent of the appointor.
- (f) The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- (g) Any appointment under this **clause 12.13** must be effected by written notice delivered to the Secretary.
- (h) An Alternate Director's appointment may be revoked by written notice by the appointor delivered to the Secretary at any time.

12.14 Remaining Directors

- (a) The Directors may act if there are vacancies on the board.
- (b) If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
 - (i) appoint a Director; or
 - (ii) convene a General Meeting.

12.15 Chairperson

- (a) The Directors will elect a Director as chair of Directors' meetings and may determine the period for which the chair will hold office.
- (b) Where a Directors' meeting is held and:
 - (i) a chair has not been elected;
 - (ii) the chair is not present within 10 minutes after the time appointed for the commencement of the meeting; or
 - (iii) the chair is unwilling or unable to act,the Directors present will elect one of their number to be chair of that meeting.

12.16 Directors' committees

- (a) The Directors may delegate any of their powers to a committee or committees which must include at least one Director.
- (b) The Directors may at any time revoke any delegation of power to a committee.
- (c) The members of such a committee will elect one of their number as chair of their meetings.
- (d) A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- (e) A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- (f) Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

12.17 Written resolutions

- (a) If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a

Directors' meeting held on the day on which the document was last signed by a Director and such resolutions may be executed in counterparts.

- (b) If the Company has one Director, a decision of the Director recorded in writing is taken to be a resolution passed at a Directors' meeting.
- (c) Any document referred to in this **clause 12.17** may be in the form of a facsimile transmission.
- (d) This **clause 12.17** applies to meetings of Directors' committees.

12.18 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

12.19 Minutes and Registers

- (a) The Directors must cause minutes to be made of:
 - (i) the names of the Directors present at all General Meetings, Directors' meetings and meetings of Directors' committees;
 - (ii) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
 - (iii) all orders made by the Directors and Directors' committees; and
 - (iv) all disclosures made of Directors' interests.
- (b) Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

12.20 Managing or Executive Director

- (a) The Directors may appoint a Director to the office of Managing Director or any other office (other than Auditor) or employment by the Company for any period (but not for life) and on any terms as they think fit.
- (b) Subject to the provisions of any contract made between a Managing Director or Executive Director and the Company, a Managing Director or Executive Director may be suspended, removed or dismissed from office by the Directors and the Directors may appoint another Director in his or her place.
- (c) If a Managing Director or Executive Director ceases to be a Director, his or her appointment as Managing Director or Executive Director terminates automatically.

- (d) If a Managing Director or Executive Director is suspended from office, he or she will not be entitled to attend or vote at any meeting of Directors.
- (e) A Managing Director:
 - (i) is not subject to the retirement provisions applicable to other Directors; and
 - (ii) is subject to the same provisions as to resignation and removal as the other Directors.
- (f) The Directors may entrust to and confer upon a Managing Director or Executive Director any powers exercisable by the Directors, whether collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors and may at any time withdraw, alter or vary all or any of the powers conferred on a Managing Director or Executive Director and the Managing Director and Executive Director are authorised to sub-delegate all or any of the powers vested in them.

12.21 Local management

- (a) The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- (b) Without limiting **clause 12.21(a)** the Directors may:
 - (i) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
 - (ii) delegate to any person appointed under **clause 12.21(b)(i)** any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.
- (c) The Directors may at any time revoke or vary any delegation under this **clause 12.21**.

12.22 Appointment of attorneys and agents

- (a) The Directors may from time to time by resolution or power of attorney appoint any corporation, firm or person or body of persons to be the attorney or agent of the Company for purposes determined by the Directors and with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution and the Act), and for the period and subject to any conditions determined by the Directors. The powers of attorney or agency may contain such provisions for the protection and convenience of persons dealing with an attorney or agent as the Directors think fit.
- (b) The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable and other forms of electronic communications.

12.23 Secretary

- (a) There may be one or more Secretaries appointed by the Directors for a term and at remuneration and on conditions determined by them.
- (b) The Directors may vest in the Secretary such power, duties and authorities as they may determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.
- (c) The Secretary is entitled to attend and be heard on any matter at all Directors' and General Meetings.
- (d) The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

12.24 Indemnity and insurance

- (a) To the extent permitted by law, every Director will be indemnified by the Company against a liability to another person (other than the Company or a Related Body Corporate) arising out of any contract entered into or act or thing done by that first person as Director or in any way in discharge of his or her duty unless the liability arises out of conduct involving a lack of good faith.
- (b) Every Auditor and other officer or employee of the Company may by resolution of the Directors be indemnified by the Company against a liability to another person (other than the Company or a Related Body Corporate) arising out of any contract entered into or act or thing done by the first person as Auditor or other officer (other than as a Director) or employee (as the case may be) or in any way in discharge of his or her duty unless the liability arises out of conduct involving a lack of good faith.
- (c) Every Director, Auditor and other officer or employee of the Company may by resolution of the Directors be indemnified out of the assets of the Company against a liability for costs and expenses incurred by that person:
 - (i) in defending any proceedings (whether civil or criminal) in which judgment is given in favour of that person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to that person under the Act.
- (d) The Company or Related Body Corporate may by resolution of the Directors pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Auditor or other officer or employee of the Company against:
 - (i) any liability other than a liability incurred by the person as such a Director, Auditor or other officer or employee and arising out of conduct involving:
 - (A) a wilful breach of duty in relation to the Company; or
 - (B) without limiting **clause 12.24(d)(i)(A)**, a contravention of section 182 or 183 of the Act; or

- (ii) a liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal and whatever their outcome.

12.25 Wholly owned subsidiary

If the Company is a wholly owned subsidiary of another body corporate the Directors are expressly authorised to act in the best interests of the holding company.

13 Documents and Records

13.1 Execution of documents

- (a) The Company may execute any document by any means allowed at law and approved by:
 - (i) the Directors; or
 - (ii) this Constitution.
- (b) The Company may execute a document by:
 - (i) a Director and another Director or the Secretary or other person appointed by the Directors each signing the document;
 - (ii) if the Company has only one Director who is also the only Secretary, that Director signing the document (without the document being countersigned); or
 - (iii) affixing the Seal, provided that every document to which the Seal is affixed must be signed by:
 - (A) a Director and countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; or
 - (B) if the Company has only one Director who is also the only Secretary, that Director (without the document being countersigned).

13.2 Seals

If the Company has a Seal, the Company may have one or more duplicate Seals which must:

- (a) be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
- (b) only be used with the authority of the Directors or a Directors' committee.

13.3 Accounts

- (a) The Directors will cause proper accounting and other records to be kept in accordance with the requirements of the Act.

- (b) The Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting and other records of the Company or any of them will be open for inspection by Members other than Directors.
- (c) A Member (who is not a Director) does not have the right to inspect any accounting or other records of the Company unless the Member is authorised to do so by Court order or a resolution of the Directors.

14 Dividends and Reserves

14.1 Payment of Dividends

A Dividend may only be paid in accordance with section 254T of the Act.

14.2 Time to pay a Dividend

Subject to **clause 14.1**, the Directors may by resolution determine the amount and date of payment of a Dividend (including an interim Dividend) to be paid to the Members.

14.3 Interest

The Company must not pay interest on any Dividend.

14.4 Reserves

- (a) The Directors may before determining a Dividend, set aside out of profits an amount by way of reserves which will, at the discretion of the Directors, be applicable for any purpose for which profits may be properly applied.
- (b) The Directors may, pending such application, invest or use the reserves in the business of the Company or in other investments as they think fit.
- (c) The Directors may carry forward any undistributed profits without transferring them to a reserve.

14.5 Dividend entitlement

- (a) Subject to the rights of Members (if any) entitled to Shares with special rights as to Dividend, any Dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the Dividend is paid.
- (b) All Dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the Dividend is paid, but, if a Share is issued on terms providing that it will rank for Dividend as from a particular date, that Share ranks for Dividend accordingly.
- (c) An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of **clauses 14.5(a) and 14.5(b)**.

- (d) A transfer of Shares does not pass the right to any Dividend declared in respect of those Shares before the registration of a transfer.

14.6 Deductions from Dividends

The Directors may deduct from a Dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares.

14.7 Distribution of assets

- (a) The Directors may resolve that an interim or a final Dividend will be paid wholly or partly by the distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.
- (b) If a difficulty arises in making a distribution of specific assets, the Directors may:
 - (i) deal with the difficulty as they consider expedient;
 - (ii) fix the value of all or any part of the specific assets for the purposes of the distribution;
 - (iii) determine that cash will be paid to any Member on the basis of the fixed value in order to adjust the rights of all the Members; and
 - (iv) vest any such specific assets in trustees as the Directors consider expedient.
- (c) All Dividends declared but unclaimed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.
- (d) If a distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the Dividend instead of the distribution of specific assets.

14.8 Payment

- (a) Any Dividend or other money may be paid by cheque sent through the mail, or by any other means resolved by the Directors.
- (b) Any joint holder may give an effectual receipt for any Dividend or other money paid in respect of Shares held by holders jointly.

14.9 Capitalisation of profits

- (a) The Directors may resolve:
 - (i) to capitalise any part of any amount standing to the credit of:
 - (A) the Company's reserve account;
 - (B) the Company's profit and loss account; or
 - (C) otherwise available for distribution; and

- (ii) that such money be set free for distribution among the Members who would have been entitled to such money if distributed by way of Dividend and in the proportions to which those Members would have been entitled to Dividends.
- (b) A distribution under **clause 14.9(a)(ii)** may not be paid in cash but be applied either in or towards:
 - (i) paying up any amounts for the time being unpaid on any Shares held by Members respectively;
 - (ii) paying up in full unissued Shares or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such Members in the proportions aforesaid; or
 - (iii) partly in the one way and partly in the other.
- (c) Whenever a resolution under **clause 14.9(a)** is passed the Directors will make all appropriations and applications of the undivided profits resolved to be capitalised and all allotments and issues of fully paid Shares or debentures (if any) and will do all acts and things required to give effect thereto. The Directors will have power to:
 - (i) make such provision by the issue of fractional certificates;
 - (ii) make such provision by payment in cash or otherwise as they think fit for the case of Shares or debentures becoming distributable in fractions; or
 - (iii) authorise any person to enter on behalf of all the Members entitled thereto into an agreement with the Company:
 - (A) providing for the allotment to them respectively, credited as fully paid up, of any further Shares or debentures to which they may be entitled upon such capitalisation; or
 - (B) (as the case may require) for the payment up by the Company on their behalf, by the application thereto of the respective proportions of the profits resolved to be capitalised, of the moneys or any part of the moneys remaining unpaid on their existing Shares,

and any agreement made under such authority will be effective and binding on all such Members.

14.10 Winding up

- (a) Nothing in this **clause 14.10** prejudices the rights of the holders of Shares issued on special terms and conditions.
- (b) If the Company is wound up, the liquidator:
 - (i) may, with the sanction of a special resolution of the Company:

- (A) divide among the Members in kind all or any of the Company's assets; and
 - (B) for that purpose, determine how he or she will carry out the division between the different classes of Members; and
- (ii) may not require a Member to accept any Shares or other securities in respect of which there is any liability.
- (c) The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

15 Default Events

15.1 Default Event

Each of the following is a Default Event in respect of a Shareholder:

- (a) the Shareholder Transfers Securities contrary to the process set out in this Constitution;
- (b) the Shareholder breaches a material term of this Constitution and:
 - (i) does not remedy that breach within 30 days after receiving notice from another party requesting the breach be remedied; or
 - (ii) the breach is material and is incapable of being remedied;
- (c) the Shareholder suffers an Insolvency Event; or
- (d) the Shareholder experiences a Change of Control without obtaining the prior consent of the Board by Unanimous Board Resolution (other than as a result of a Transfer in accordance with **clause 7**).

15.2 Notification

A Shareholder must immediately notify the other Shareholders and the Company when it becomes aware of the occurrence of a Default Event in relation to it.

15.3 Right to purchase

If a Default Event occurs in respect of a Shareholder ('**Defaulting Shareholder**'), the other Shareholders ('**Non-defaulting Shareholders**') will have (in addition to any other rights under this Constitution) the right to purchase any Securities held by the Defaulting Shareholder ('**Default Securities**') in accordance with this **clause 15**.

15.4 Default Notice

If a Default Event occurs in respect of a Defaulting Shareholder, a Non-defaulting Shareholder may give notice of the Default Event to the Defaulting Shareholder, each other

Non-defaulting Shareholder and the Company, at which time the Defaulting Shareholder will be deemed to have:

- (a) served on the date of the Default Event a notice on each Non-defaulting Shareholder ('**Default Notice**') offering to sell to that Non-defaulting Shareholder the number of Default Securities determined in accordance with **clause 15.5** at 85% of the Fair Market Value (except that if the Insolvency Event is the death of a Shareholder, it will be at 100% of the Fair Market Value); and
- (b) appointed the Company, acting by any of its Directors, to act as the attorney of that Shareholder to sign all documents and take all actions to effect the transfer of the Default Securities to the Non-defaulting Shareholders at 85% of Fair Market Value (except that if the Insolvency Event is the death of a Shareholder, it will be at 100% of the Fair Market Value).

15.5 Number of Default Securities offered

Each Non-defaulting Shareholder may buy a number of the Default Securities calculated in accordance with the following formula:

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

Where:

- 'N' = the number of Default Securities the Non-defaulting Shareholder must be offered;
- 'A' = the total number of Default Securities;
- 'B' = the number of Shares held by the Non-defaulting Shareholder;
- 'C' = the total number of Shares held by all Shareholders as at the date of the Default Notice; and
- 'D' = the number of Shares held by the Seller, including the Default Securities.

Fractions of Securities are rounded down to the nearest whole number (or rounded down to nil if less than half a whole number) when calculating the number of Securities issued or transferred.

15.6 Response to Default Notice

Within 20 business days after the Fair Market Value is agreed or determined in accordance with **clause 15** ('**Offer Period**'), each Non-defaulting Shareholder must give the Company notice stating:

- (a) whether it accepts or rejects in full or in part the offer made in the Default Notice; and

- (b) the number and class of Default Securities which the Non-defaulting Shareholder will be prepared to buy (which may be a number greater than their entitlement under **clause 15.5**).

15.7 If Non-defaulting Shareholders agree to buy Default Securities

If the Non-defaulting Shareholders accept an offer made in the Default Notices for all or any of the Default Securities then those Non-defaulting Shareholders who accepted the offer ('Buyers') are deemed to have unconditionally agreed to buy, and the Defaulting Shareholder is deemed to have agreed to unconditionally sell, Default Securities in respect of each class allocated as follows:

- (a) first, each Buyer that agreed to buy less than or equal to the number of Default Securities in that class to which they were entitled under **clause 15.5**, will be allocated the number of Default Securities in that class that they agreed to buy;
- (b) next, each Buyer that agreed to buy more than the number of Default Securities in that class to which they were entitled under **clause 15.5**, will be allocated:
 - (i) first, the number of Default Securities in that class to which they were entitled under **clause 15.5**; and
 - (ii) then such further number of Default Securities in that class from those that remain that represent the same proportion that (a) the number of Default Securities in that class that they notified under **clause 15.6(b)** represent to (b) the total number of Default Securities in that class notified by all Buyers under **clause 15.6(b)**.

15.8 Suspension of rights

From the date the Default Notice is given until the Securities are transferred to the Non-Defaulting Shareholders:

- (a) all rights attaching to the Securities held by the Defaulting Shareholder are suspended; and
- (b) any Director appointed by the Defaulting Shareholder is taken to have been removed by the Defaulting Shareholder and its Director appointment rights are suspended.

16 Fair Market Value

16.1 Fair Market Value

The Fair Market Value of any Securities (whether issued or unissued) is:

- (a) if the Fair Market Value is being determined in respect of Default Securities:
 - (i) the amount agreed between the Defaulting Shareholder(s) and the Non-defaulting Shareholder(s); or

- (ii) if no such amount is agreed with 10 business days after the date of the relevant Default Notice, the amount determined in accordance with **clause 16.2**; or
- (b) in all other cases, the amount determined in accordance with **clause 16.2**.

16.2 Determined by the Expert

- (a) If this clause applies, the Fair Market Value is the amount determined by the Expert to be the fair market value of the Securities, which value must be determined by reference to:
 - (i) the market value of businesses of equivalent nature, size and scale;
 - (ii) the Company as a whole (including any Subsidiary);
 - (iii) the market value of the Securities on an arm's length sale between a willing vendor and a willing purchaser;
 - (iv) if the Company is carrying on the Business as a going concern, on the assumption that it continues to do so;
 - (v) any rights or restrictions attaching to the relevant Securities;
 - (vi) no discount for illiquidity, no discount applied to a minority stake, no premium applied to a majority stake, and no change of control premium; and
 - (vii) any other information as the Expert reasonably thinks fit.
- (b) The Board must instruct the Expert as soon as practicable after the date 10 business days after the date of the relevant Default Notice and must instruct the Expert to provide its written valuation as soon as possible and in any event within 20 business days of being instructed.
- (c) In determining a fair market value for the Securities, the Expert will act as an expert and not an arbitrator.
- (d) The Expert's determination will be final and binding on the parties in the absence of manifest error and not subject to review.
- (e) The Defaulting Shareholder must pay the Expert's costs.

17 General

17.1 Ordinary place of business

To the extent required under the Act, the Company's principal place of business must remain in Australia.

17.2 Company loans

Unless otherwise agreed in writing, any loan made by the Company to a Member will be on the terms set out in section 109N of the *Income Tax Assessment Act 1936* (Cth).

17.3 Trustee of superannuation fund

Notwithstanding any other provisions in this constitution, for so long as the Company acts as trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth), the Company is prohibited from distributing the income or property of the Company to its members

17.4 Legal capacity

To the extent permitted by the Act the Company has the legal capacity and powers of an individual both in and outside of Australia.

17.5 Replaceable rules

The replaceable rules in the Act do not apply to the Company to the extent permitted by law.

17.6 Proprietary company

The Company is a proprietary company and must comply with all provisions of the Act in order to remain registered as a proprietary company.

17.7 Company capital

- (a) The capital of the Company may be divided into different classes of shares as allowed by this Constitution.
- (b) The shares of each class may have or confer such preferential or other rights and privileges, and be held under such restrictions and conditions as prescribed by this Constitution.
- (c) The Company will have the power to increase or reduce its capital.

17.8 Liability of Members

The liability of the Members is limited.

17.9 Expenses for promotion and incorporation

The Company will pay all expenses reasonably and properly incurred for its promotion and incorporation.

17.10 Restrictions on business activities

During such time the Company conducts a CSF offer, or has one or more CSF shareholders, and subject to any longer period required by the Act, the Company and any related party of the Company, must not carry on a business which has a substantial purpose of investing in Securities or interests in other Entities or schemes.

17.11 Notices

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
 - (i) serving it on the person;
 - (ii) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices; or
 - (iii) if the notice is to a Member and the Member has no registered office, posting it on a notice board at the Office.
- (b) A notice sent by post is taken to be served by properly addressing, prepaying and posting an envelope containing the notice on the day after the day on which it was posted.
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served by properly addressing the facsimile transmission or electronic notification and transmitting it on the day after the day of its dispatch.
- (d) A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.
- (e) A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.
- (f) Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this **clause 17.10** on the person from whom it derives its title.
- (g) A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it to the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register or any other address which the Member or joint holder has in writing notified the Company:
 - (i) in the case of a Member who does not have a Registered Address in Australia, by airmail post; and
 - (ii) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.
- (h) A Member whose Registered Address is not in Australia may specify in writing an address in Australia as the Member's Registered Address within the meaning of this **clause 17.10**.
- (i) A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

- (j) Subject to the Act, the signature to a written notice given by the Company may be written or printed.
- (k) All notices sent by post outside Australia must be sent by prepaid airmail post.

17.12 Severance

Any provision of this Constitution that is invalid or unenforceable must be read down to the extent necessary to avoid that effect or if that is not possible, it must be excluded from this Constitution but only to the extent necessary. All other provisions of this Constitution continue to be valid and enforceable in accordance with their terms.

18 Additional CSF Provisions

- (a) The Company may, from time to time, make a CSF offer.
- (b) If at any time the Company is making a CSF offer, or has one or more CSF shareholders, the following clauses apply:
 - (i) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, the act shall not be done;
 - (ii) nothing contained in this Constitution prevents an act being done that the Act requires to be done in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders;
 - (iii) if the Act requires an act to be done or not to be done in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Act requires this Constitution to contain a provision in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, and it does not contain such a provision, this Constitution is deemed to contain that provisions;
 - (v) if the Act requires this Constitution to not contain a provision in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, and it does contain such a provision, this Constitution is deemed to not contain that provision; and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Act in connection with a CSF offer, or as a result of the Company having one or more CSF shareholders, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

Annexure 1

Class A Redeemable Preference Share Terms

1 Definitions

In this Annexure, terms defined in the Constitution have those meanings and:

Class A Redeemable Preference Shareholder means the holder of a Class A Redeemable Preference Share;

Conversion Date means the date a conversion takes effect as set out in clause 7.3 or 7.4 of this Annexure;

Conversion Formula means the conversion formula set out in clause 7.1 of this Annexure;

Face Value means an amount equal to the Issue Price multiplied by the number of Class A Redeemable Preference Shares held by the relevant Class A Redeemable Preference Shareholder;

Fully Diluted Basis means the fully diluted capital in the Company, taking into account:

- (a) the conversion or exercise of all outstanding options and warrants in the Company (whether vested or unvested);
- (b) all Shares reserved and available for future grant under any equity incentive, employee share option plan or similar plan of the Company; and
- (c) all other securities that may be convertible into Shares in the Company;

Issue Date means the date the relevant Class A Redeemable Preference Share is issued to the relevant Class A Redeemable Preference Shareholder;

Issue Price means the original issue price of each Class A Redeemable Preference Share, being \$1.00;

Maturity Date means the date that is 36 months after the Issue Date;

Ordinary Share means an ordinary share issued in the capital of the Company;

Redemption Amount means the amount to be paid by the Company to redeem a Class A Redeemable Preference Share as calculated under clause 8(c) of this Annexure A;

Redemption Date means the date the Class A Redeemable Preference Shares are to be redeemed as set out in the Redemption Notice;

Redemption Notice has the meaning given to that term in clause 8(a) of this Annexure.

2 Key terms of the Preference Shares

- (d) This Annexure sets out the terms of the Class A Redeemable Preference Shares.

- (e) Without limiting any other term in this Annexure, a Class A Redeemable Preference Share:
 - (i) is in a separate class of shares in the Company;
 - (ii) ranks pari passu to each other Class A Redeemable Preference Shares and holders of Class A Redeemable Preference Shares will share in the rights and benefits attaching to or arising from Class A Redeemable Preference Shares on a pro rata basis dependent on their respective holding of Class A Redeemable Preference Shares at the relevant time;
 - (iii) is redeemable only in accordance with these terms; and
 - (iv) is convertible only in accordance with these terms.

3 Voting rights

A Class A Redeemable Preference Share confers on its holder the same voting rights as are conferred on the holder of an Ordinary Share. Each Class A Redeemable Preference Share entitles its holder to one vote at a general meeting of the Company.

4 Dividends

Subject to clause 6 of this Annexure, a Class A Redeemable Preference Share confers on its holder the same dividend rights as are conferred on the holder of an Ordinary Share. Holders of Class A Redeemable Preference Shares are entitled to participate in any dividends paid by the Company on the same basis as holders of Ordinary Shares.

5 Conversion and redemption

- (a) Subject to earlier redemption by the Company under clause 8 of this Annexure, a Class A Redeemable Preference Share may be converted in the manner set out in clause 7 of this Annexure.
- (b) A Class A Redeemable Preference Share may be redeemed by the Company in the manner set out in clause 8 of this Annexure.

6 Liquidation Preference

On a winding up or liquidation, the capital and surplus of the Company must be distributed in the following order of priority:

- (a) first, to each Class A Redeemable Preference Shareholder until it has received, in respect of each Class A Redeemable Preference Share held by it at the time of the winding up or liquidation, the lesser of:
 - (i) the full amount of the capital and surplus of the Company available for distribution divided by the number of Class A Redeemable Preference Shares on issue at the time of the winding up plus any declared but unpaid dividends on such Class A Redeemable Preference Shares; and
 - (ii) the Issue Price paid for the Class A Redeemable Preference Shares; and

- (b) second, to each holder of Ordinary Shares until it has received, in respect of each Ordinary Share held by it at the time of the winding up or liquidation, the lesser of:
 - (i) the remaining amount; and
 - (ii) the issue price paid for the Ordinary Shares; and
- (c) subject to the rights attaching to other classes of shares issued from time to time, third, to all holders of Ordinary Shares and Class A Redeemable Preference Shares the remaining amount (if any), pro rata in accordance to the number of Shares they hold.

7 Conversion

7.1 Conversion Formula

All Class A Redeemable Preference Shares held by a Class A Redeemable Preference Shareholder will be converted into that number of Ordinary Shares calculated as follows:

$$\frac{\text{Face Value}}{\$25,000} \times 1.00\% \text{ of the outstanding issued Shares of the Company on a Fully Diluted Basis}$$

7.2 Automatic conversion on the Maturity Date

- (a) Unless redeemed earlier by the Company under clause 8 of this Annexure, on the Maturity Date, all of the Class A Redeemable Preference Shares held by each Class A Redeemable Preference Shareholder will be converted automatically into that number of Ordinary Shares calculated in accordance with the Conversion Formula in clause 7.1 of this Annexure, without any requirement for the Company or the Class A Redeemable Preference Shareholder to give a conversion notice.
- (b) If the calculation under the Conversion Formula in clause 7.1 of this Annexure results in an entitlement to a number of Ordinary Shares which includes a fraction of an Ordinary Share, the fraction will be rounded upwards.

7.3 No option to elect early conversion otherwise than following an early redemption notice

- (a) Unless otherwise agreed in writing between the Company and the relevant Class A Redeemable Preference Shareholder, subject to clause 7.3(b) of this Annexure, neither the Company nor a Class A Redeemable Preference Shareholder may elect to convert a Class A Redeemable Preference Share prior to the Maturity Date.
- (b) If the holder of a Class A Redeemable Preference Shareholder does not consent to the proposed redemption of all of their Class A Redeemable Preference Shares in accordance with clause 8(b) of this Annexure, all of the Class A Redeemable Preference Shares held by the Class A Redeemable Preference Shareholder will be converted automatically into that number of Ordinary Shares calculated in accordance with the Conversion Formula in clause 7.1 of this Annexure, without any requirement for the Company or the Class A Redeemable Preference Shareholder to give a conversion notice.

7.4 Issue of Ordinary Shares on conversion

The Company must, on the Conversion Date, effect conversion of the Class A Redeemable Preference Shares into Ordinary Shares in accordance with the Conversion Formula in clause 7.1 of this Annexure (such date being the '**Conversion Date**'), by:

- (a) issuing the Ordinary Shares to the relevant Class A Redeemable Preference Shareholder;
- (b) procuring that the relevant Class A Redeemable Preference Shareholder is entered as the holder of the Ordinary Shares in the register of members of the Company; and
- (c) issuing share certificates for the Ordinary Shares in the name of the relevant Class A Redeemable Preference Shareholder.

7.5 Effect of conversion

Unless redeemed earlier by the Company under clause 8 of this Annexure, on the Conversion Date, the relevant Class A Redeemable Preference Shareholder is taken to have:

- (a) subscribed for the Ordinary Shares that are to be issued upon conversion of the Class A Redeemable Preference Shares;
- (b) authorised the Company to enter the relevant Class A Redeemable Preference Shareholder's details into the register of members; and
- (c) agreed to be bound by the constitution of the Company.

7.6 Ranking of Ordinary Shares on conversion

Each Ordinary Share issued on conversion of a Class A Redeemable Preference Share will be issued as fully paid and will rank equally with all other Ordinary Shares then on issue.

7.7 Rounding

If the calculation under the Conversion Formula in **clause 7.1** of this Annexure results in an entitlement to a number of Ordinary Shares which includes a fraction of an Ordinary Share, the fraction will be rounded upwards to the next whole number of shares.

8 Redemption by the Company

- (a) Subject to the Act, at any time before the Maturity Date, the Company may elect to redeem all (but not some) of the Class A Redeemable Preference Shares held by a particular Class A Redeemable Preference Shareholder for the applicable Redemption Amount, by giving written notice to the Class A Redeemable Preference Shareholder ('**Redemption Notice**'), subject to the Class A Redeemable Preference Shareholder consenting or being deemed to consent to the redemption.
- (b) A Class A Redeemable Preference Shareholder who receives a Redemption Notice may reject the redemption of their Class A Redeemable Preference Shares by giving written notice to the Company no later than one Business Day prior to the Redemption Date. If such a notice is provided to the Company the redemption of that holders Class A Redeemable Preference Shares will not proceed but those shares

will automatically convert into Ordinary Shares in accordance with clause 7.3(b) of this Annexure.

- (c) A Class A Redeemable Preference Shareholder who receives a Redemption Notice will be deemed to have consented to the redemption of all of their Class A Redeemable Preference Shares if they, prior to the date that is one Business Day prior to the Redemption Date, consent to the redemption or do not provide written notice to the Company in the form required by clause 8(b) of this Annexure.
- (d) The Redemption Notice must specify the Redemption Date (which must be at least 3 Business Days after the date of the Redemption Notice) and the applicable Redemption Amount (as calculated in accordance with **clause 8** of this Annexure).
- (e) The applicable Redemption Amount, in respect of all the Class A Redeemable Preference Shares held by a particular Class A Redeemable Preference Shareholder, is calculated as follows:
 - (i) if the Redemption Date is within 12 months from the Issue Date, an amount equal to the Face Value multiplied by 125%;
 - (ii) if the Redemption Date is after 12 months but before 24 months from the Issue Date, an amount equal to the Face Value multiplied by 150%; or
 - (iii) if the Redemption Date is after 24 months but before the Maturity Date, an amount equal to the Face Value multiplied by 200%.
- (f) If the Company elects to redeem the Class A Redeemable Preference Shares held by particular Class A Redeemable Preference Shareholder, the Company must redeem all Class A Redeemable Preference Shares held by that Class A Redeemable Preference Shareholder, and not only some.
- (g) The Company may elect to redeem all Class A Redeemable Preference Shares held by only some, and not all, Class A Redeemable Preference Shareholders.

9 Variation of Rights

- (a) The provisions of the Constitution relating to general meetings apply, with necessary changes, to separate class meetings of holders of Class A Redeemable Preference Shares as if they were general meetings.
- (b) For the purposes of the Act and the Constitution, any issue of Class A Redeemable Preference Shares or Ordinary Shares in accordance with the Constitution will not be regarded as a variation or abrogation of the rights of the holders of the Class A Redeemable Preference Shares, the Ordinary Shares or the Shares of any other class.
- (c) To the extent that any provision of the Constitution is inconsistent with this clause 9 of this Annexure, this clause 9 of this Annexure prevails to the extent of that inconsistency.