

**CORPORATIONS ACT 2001
COMPANY LIMITED BY SHARES**

**CONSTITUTION
OF
BON CUSTODIAN PTY LTD
ACN: 614 679 917**

**NTAA Corporate
Melbourne, Victoria**

ACCOUNTANTS
COPY

CORPORATIONS ACT 2001
COMPANY LIMITED BY SHARES
CONSTITUTION

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INTERPRETATION

1 Defined Terms - Interpretation

In this constitution:-

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

Business Day means a day on which banks are open for general business in the State other than a Saturday or Sunday;

Company means the company to which this constitution relates;

Company Secretary means the person (if any) appointed to perform the duties of a company secretary of the Company;

Directors means the director or directors of the Company acting as a body and where the Company has only one director means that director;

Effective Control means the ability to exercise control over the decision-making of the relevant entity and, for a company, means holding at least 50% of the shares issued in the company or having 50% of the voting power for that company;

Member means any holder of shares in the Company entered in the register of members;

Related Corporation means a company that is related to another company as related bodies corporate under the Act;

Secured Loan means a loan where:-

- (i) 100% of the loan is secured by a registered mortgage over real estate: and
- (ii) the market value of the mortgaged property (after deducting any mortgages on the property which have priority) is at least 110% of the amount lent at the time the loan is made;

Share means any share in the capital of the company issued and not cancelled from time to time;

State means the State or Territory in which the Company is incorporated;

Transfer Notice means a notice given in accordance with Clause 32;

Transmission Event means:

- (iii) in respect of a member who is an individual:
 - (A) the death of the member;
 - (B) the bankruptcy of the member; or
 - (C) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (iv) in respect of a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member;

- (b) Section 46 of the *Acts Interpretation Act 1901* (Cth) applies in relation to this constitution as if it were an instrument made by an authority under a power conferred by the Act as in force on the day on which this constitution becomes binding on the Company;

- (c) This constitution is to be interpreted subject to the Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to the Company;

- (d) Unless the contrary intention appears, an expression in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act has the same meaning as in that provision of the Act;

- (e) Subject to clause 1(d), unless the contrary intention appears, an expression in a regulation, rule or other legislative instrument that is defined for the purposes of the Act has the same meaning as in that regulation, rule or other legislative instrument;
- (f) Clause headings and the index are inserted for convenience only and are not to be used in the interpretation and construction of this constitution;
- (g) Words importing the singular include the plural and vice versa;
- (h) Words importing one gender include other genders;
- (i) A reference to any party or other person includes that person's successors and permitted assigns;
- (j) A reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
- (k) A reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- (l) A reference to a clause is a reference to a clause of this constitution;
- (m) A reference to writing includes all means of reproducing words in a tangible and permanently visible form;
- (n) A reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, co-operative and any other legal or commercial entity or undertaking; and
- (o) Where a party comprises two or more persons any obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that party is deemed to include a reference to any one or more of those persons.

PROPRIETARY COMPANY

2 Number of Members

The Company must have no more than fifty non-employee members. For the purposes of this clause:-

- (a) joint holders of a share count as one person;
- (b) an employee member is a member who is an employee of the Company, or of a subsidiary of the Company, or a member who was an employee of the Company, or of a subsidiary of the Company, when they became a member.

3 Prospectuses

The Company must not engage in any activity that would require disclosure to investors under Chapter 6D of the Act except as permitted by the Act.

SHARE CAPITAL AND VARIATION OF RIGHTS

4 Power to Issue or Buy-back Shares

- (a) Subject to the provisions of this constitution and without prejudice to any subsisting special rights previously conferred on the holders of existing shares, the unissued shares in the Company are under the control of the Directors.
- (b) The Directors may allot or otherwise dispose of the shares, or issue or grant options in respect of shares, to such persons on such terms and at such times and with such preferred, deferred or other special rights, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit.

- (c) In particular, the Directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.
- (d) Subject to the provisions of the Act, the Company may reduce the share capital of the Company or buy-back shares of the Company or otherwise redeem its shares or share capital as permitted by the Act.

5 **Pro-Rata Offers to Existing Holders**

Before issuing shares of a particular class, the Directors must offer the shares to the existing holders of shares of that class. As far as practicable, the number of shares offered to each holder must be in proportion to the number of shares of that class that they already hold. To make the offer, the Directors must give the existing holders a statement setting out the terms of the offer, including:-

- (a) the number of shares offered; and
- (b) the period for which the offer will remain open.

6 **Non Pro-Rata Offers**

The Directors may issue any shares not taken up under the offer under clause 5 as it sees fit. The Company may by resolution passed at a general meeting authorise the Directors to make a particular issue of shares without complying with clause 5.

7 **Preference Shares**

The Company has power to issue preference shares, including redeemable preference shares which are redeemable:-

- (a) at a fixed time or on the happening of a particular event; or
- (b) at the Company's option; or
- (c) at the holder's option.

8 **Class Rights**

- (a) If the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied or cancelled (whether or not the Company is being wound up) only by special resolution of the Company and:-
 - (i) by special resolution passed at a separate meeting of the class of members holding shares in the class; or
 - (ii) with the written consent of the members with at least two thirds of the votes in the class.
- (b) The provisions of this constitution relating to general meetings will apply to every separate meeting referred to in sub-clause (a) with any changes that are necessary but so that:-
 - (i) the necessary quorum is two persons holding, or representing by proxy, one-third of the issued shares of the class; and
 - (ii) any holder of shares in the class, present in person or by proxy or power of attorney or as representative, may demand a poll.
- (c) Without limiting in any way the classes of shares that the Company may issue or the rights that may attach to any classes of shares or the variation of such classes or rights, the Company may issue new shares, or (subject to this clause) vary existing shares, of a designated class and with rights attaching to that class as suggested in Schedule 1 to this Constitution.
- (d) If the shares issued upon registration of the Company are divided into different classes and are given particular rights and the wording used to designate those classes and rights is not identical to

that contained in Schedule 1, then Schedule 1 shall immediately cease to have any application to this Constitution.

- (e) If at any time after registration of the Company the Directors determine or the members resolve that shares of a designated class which is also contained in Schedule 1 shall have rights of any kind, then to the extent of the inconsistency Schedule 1 shall immediately cease to have any application to this Constitution.

9 **Rights Affected by Further Issue**

The rights attached to an existing class of shares issued with preferred, deferred or other special rights are deemed to be varied by the creation or issue of new shares ranking equally with those existing shares unless the new issue is authorised by:-

- (a) the terms of issue of the existing shares; or
 (b) the Company's constitution (if any) as in force when the existing shares were issued.

10 **Brokerage, Commission and Interest on Share Capital**

The Company may exercise the powers of paying brokerage or commission conferred by the Act, provided that:-

- (a) the rate per cent or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Act; and
 (b) the commission does not exceed the rate or an amount of ten per cent of the total amount payable in respect of the shares upon their allotment.

Such commission may be satisfied by any, all or a combination of the payment of cash or the allotment of fully or partly paid shares.

11 **Trusts**

- (a) If a member holds shares non-beneficially then that member shall give notice to the Company of that fact in accordance with the Act.
 (b) Even if the Company has notice of a claim or interest, the Company is not bound by, nor can it be compelled in any way to recognise any equitable, contingent, future or partial interest in or claim to any share, option, unit of a share or (except as otherwise provided by this constitution or by law) any other rights in respect of any share except an absolute right to the entirety in the registered holder.
 (c) With the consent of the Directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust. Otherwise, the Company will not recognise any person as holding any share upon any trust even if the Company has notice of that trust.

12 **Encumbrances**

- (a) A member must not provide its shares as security or create any encumbrance over its shares in favour of any person, except with the written approval of the Directors.
 (b) In granting their written approval under sub-clause (a), the Directors may impose any terms or conditions that they think fit.

13 **Share Certificates**

- (a) Every person whose name is entered as a member in the register of members is entitled without payment to receive a share certificate executed by the Company in accordance with the Act. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

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

LIEN

14 Lien for Unpaid Moneys

- (a) The Company has a first and paramount lien on:-
- (i) each partly paid share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
 - (ii) all shares registered in the name of a single person for all money presently payable by that person or that person's estate to the Company.
- (b) The Directors may at any time declare any share to be wholly or partially exempt from the provisions of this clause.
- (c) The Company's lien, if any, on a share extends to all dividends payable thereon and to the proceeds from the sale of the share.
- (d) Registration by the Company of a transfer of shares on which the Company has a lien without giving to the transferee notice of its claim releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

15 Sale under Lien

The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien where:-

- (a) an amount in respect of which a lien exists under clause 14 is presently payable;
- (b) the Company has, not less than 14 days before the date of the sale, given to the registered holder of the share (or the person entitled thereto by reason of the registered holder's death or bankruptcy) a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.

16 Transfer of Shares Sold

- (a) To give effect to any sale under clause 15, the Directors may authorise some person to transfer the shares sold to the purchaser.
- (b) The purchaser will be registered as the holder of the shares comprised in any transfer under sub-clause (a).
- (c) The purchaser is not bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- (d) The proceeds of a disposal of shares under this constitution must be applied in the payment of:
 - (i) first, the expenses of the disposal;
 - (ii) second, all money presently payable by the former holder whose shares have been disposed of, and the balance (if any) must be paid (subject to any lien that exists under clause 14 in respect of money not presently payable) to the former holder;
 - (iii) in the case of an uncertificated holding, as soon as practicable after the disposal; and
 - (iv) in the case of a certificated holding, on the former holder delivering to the Company the certificate for the shares that have been disposed of or such other proof of title as the Directors may accept.

- (e) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the Company exclusively.

CALLS ON SHARES

17 Making of Calls

- (a) The Directors may from time to time make calls upon the members in respect of any money unpaid on their shares but may not call money unpaid according to the terms of issue of those shares which is payable at other fixed times.
- (b) Each member will (subject to receiving at least fourteen days' notice specifying the time or times and place of payment) pay the amount called to the Company at the time or times and place so specified.
- (c) The Directors may revoke or postpone a call or require the call to be paid by way of instalment or extend the time for payment of a call.

18 Timing of Call

A call is deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

19 Joint Holders' Liability

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

20 Interest on Calls

- (a) If a sum called in respect of a share is not paid on or before the day appointed for payment, the person from whom the sum is due must pay:-
- (i) interest on the sum from the day appointed for payment to the time of actual payment at a rate not exceeding that determined under clause 24; and
 - (ii) any costs, expenses or damages incurred by the Company in relation to the non-payment or late payment of the sum.
- (b) The Directors are at liberty to waive payment of all or part of the interest or costs, expenses or damages payable under sub-clause (a).

21 Deemed Calls

- (a) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date is, for the purposes of this constitution, deemed to be a call duly made and payable on the date that it becomes payable under the terms of issue.
- (b) In case of non-payment all the relevant provisions of this constitution in relation to payment of interest and expenses, forfeiture, or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

22 Differentiation between Holders

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

23 Moneys in Advance of Calls

- (a) The Directors may accept from any member all or any part of the money uncalled and unpaid upon any shares held by the member.
- (b) The Directors may (until the money received would, but for the advance, become payable) pay interest on the sum accepted under sub-clause (a) at a rate not exceeding the rate determined

under clause 24 and as agreed upon between the Directors and the member paying the sum in advance.

24 **Interest payable**

- (a) For the purposes of clauses 20(a)(i) and 23(b), the rate of interest payable to or by the Company is:
 - (i) if the Company have fixed a rate, the rate so fixed; or
 - (ii) in any other case, 18% per annum.
- (b) Interest payable under clauses 20(a)(i) and 23(b) accrues daily and may be capitalised monthly or at such other intervals as the Directors think fit.

TRANSFER OF SHARES

25 **Form of Transfer**

- (a) Subject to this constitution, any member may transfer all or any of the member's shares by written transfer in any usual form or in any other form which the Directors approve.
- (b) The transfer must be executed by or on behalf of both the transferor and the transferee.

26 **Holder until Registration**

A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered into the register of members in respect of the shares.

27 **Pre-conditions to Registration**

The Directors are not required to register a transfer of shares in the Company unless:

- (a) the provisions of this constitution (including, but not limited to, clauses 2, 32 and 33) have been complied with;
- (b) the transfer and any share certificate have been lodged at the Company's registered office;
- (c) the transfer has been duly stamped (if required by law to be stamped);
- (d) the Directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

28 **Right to Refuse Registration**

The Directors may refuse to register a transfer of shares in the Company for any reason and without being bound to give any reason for such refusal or without specifying any grounds for the refusal.

29 **Suspension of Registration**

The Directors may suspend registration of transfers of shares in the Company at the times and for the periods it determines provided that the period or periods of suspension must not exceed thirty days in any one calendar year.

TRANSMISSION OF SHARES

30 **Death of a Member**

- (a) In the case of the death of a member, the only persons the Company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
 - (i) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (ii) the survivor or survivors where the deceased was a joint holder.

- (b) Nothing contained in sub-clause (a) releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.

31 **Transmission Events Generally**

- (a) A person who becomes entitled to a share as a result of a Transmission Event may, upon producing the certificate for the share and such other evidence as the Directors may require to prove that person's entitlement to the share, elect:
- (i) to be registered as the holder of the share by signing and serving on the company a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the share by executing a transfer of the share to that other person.
- (b) The provisions relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with such changes as are necessary, to any transfer under sub-clause (a)(ii) as if the relevant Transmission Event had not occurred and the transfer were signed by the registered holder of the share.
- (c) For the purpose of this constitution, where 2 or more persons are jointly entitled to any share in consequence of a Transmission Event they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants.
- (d) Notwithstanding clause 30(a), the Directors may register a transfer of shares signed by a member prior to a Transmission Event even though the Company has notice of the Transmission Event.

SHARE TRANSFERS

32 **Pre-emptive Rights**

Notwithstanding anything contained in this constitution the right to transfer Shares is subject to the following provisions and restrictions namely:-

- (a) Any member wishing to dispose of Shares ("the Transferor") must give written notice ("a Transfer Notice") to the Company that the member wishes to dispose of such Shares.
- (b) The Transfer Notice must state the price per Share ("the Prescribed Price") which the Transferor is willing to accept for the Shares and that the Transfer Notice constitutes the Company as the Transferor's agent for the sale of all or (subject to this Clause) any of the Shares at the Prescribed Price.
- (c) Once a Transfer Notice is given it is not revocable except:-
 - (i) as provided below; or
 - (ii) with the consent of the Board.
- (d) A Transfer Notice may not be given by a member within 6 months after the giving by such member of a previous Transfer Notice except:-
 - (i) with the prior written consent of the Board; or
 - (ii) where the Prescribed Price stated in the latter Transfer Notice is less than the Prescribed Price in the last such previous notice.
- (e) As soon as possible and no later than 21 days after receiving a Transfer Notice the Company must offer the shares referred to in the Transfer Notice for sale to the members (other than the Transferor) at the Prescribed Price pro rata to their then respective shareholdings.

- (f) Every offer referred to in Clause 32(e) must be made by written notice served upon each of the members (other than the Transferor) specifying the number of Shares offered and limiting a reasonable time (not being less than 7 days) within which the offer must be accepted as to the whole or part of the Shares offered and stating that so far as it is not so accepted it is deemed to be declined. Time in this respect is of the essence of the offer. Any Shares declined or deemed to be declined by any of the members to which they are originally offered must be offered in the same manner (except as set out below) and proportions and at the Prescribed Price to such of the members as have accepted the Shares originally offered to them, and so on until either all the Shares mentioned in the Transfer Notice have been purchased or it can be concluded that the last offers have been declined and none of the members is willing to purchase any further Shares. The time within which such further offer or offers must be accepted is such time (not being less than 7 days) as the Board specifies in the notice making the offer.
- (g) As soon as the final result of the offers is known to the Company it must give written notice of such result to the Transferor.
- (h) If less than the whole of the Shares offered as above have been agreed to be purchased the Transferor is entitled by written notice to the Company given within 7 days of the giving of the notice pursuant to Clause 32(g) to revoke the Transfer Notice and upon such revocation any contract for the sale and purchase of such Shares becomes void.
- (i) If the whole of the Shares offered as set out above have been agreed to be purchased or if less than the whole of such Shares have been agreed to be purchased and the Transferor has failed to give a notice pursuant to Clause 32(h) revoking the Transfer Notice, the members who have accepted the offer are bound to purchase the Shares accepted by them and the Transferor is bound upon payment of the Prescribed Price per Share to transfer those Shares to such members respectively.
- (j) Every notice given by the Company under Clause 32(g) must state which of the members are purchasers of the Shares mentioned in the Transfer Notice and the number of Shares agreed to be purchased by each of them.
- (k) Sales and purchases of Shares pursuant to Clause 32(i) must be completed at places and times to be appointed by the Company, not being more than 28 days after the date on which the notice under Clause 32(g) is given.
- (l) If the Transferor, having become bound to transfer any Shares to any member as purchaser, defaults in transferring the Shares, the Company is entitled to execute a transfer of the Shares to such member on behalf of the Transferor and if so required by such member must execute a transfer of such Shares and receive the purchase money and must upon the transfer being executed by such member enter the member's name in the register as the holder of the Shares and must hold the purchase money in trust for the Transferor. The receipt of the Company for the purchase moneys is a good discharge to the purchaser, and the purchaser is not bound to see to the application of the purchase moneys, and after the purchaser's name has been entered in the register in purported exercise of the aforesaid powers the validity of the proceedings may not be questioned by any person.
- (m) If the offer of Shares made pursuant to Clause 32(e) does not result in the members or some or one of them agreeing to purchase all the Shares mentioned in the Transfer Notice the Transferor may at any time within four months after receiving the notice referred to in Clause 32(g) transfer those

Shares which the members have not agreed to purchase to any person on a bona fide cash sale of such Shares at any price not less than the Prescribed Price.

- (n) Before approving any transfer pursuant to Clause 32(m) the Board may require a statutory declaration by both the Transferor and the transferee named in the transfer and such further evidence as the Board considers necessary that the Shares included in the transfer are being transferred in pursuance of a bona fide cash sale for the consideration stated in the transfer without any reduction, rebate or allowance whatsoever to the transferee.
- (o) Prior to any transfer being effected pursuant to this Clause the transferee (unless the transferee is already a member of the Company) must agree to be bound by the terms of this constitution (as modified from time to time) and agree to execute a deed of adherence to any existing shareholders' agreement in a form reasonably acceptable to the Directors.
- (p) A transfer or purported transfer of Shares which contravenes the provisions of this Clause is void.
- (q) The Board may decline to register a transfer of Shares on which the Company has a lien but otherwise and subject to this Clause 32 is bound to register a transfer of Shares made in accordance with the provisions of this subclause.
- (r) The provisions of Clauses 32(a) to 32(n) do not apply to a transfer to a person in accordance with Clause 33.
- (s) Any change in the Effective Control of any member is deemed to be the giving of a Transfer Notice by that member to the Company upon the day upon which such change comes to the attention of the Board and the Prescribed Price in respect of such Shares is the value of the Shares as determined by the Board, the decision of which is conclusive.
- (t) This clause may be amended by a Special Resolution passed by the Company and not otherwise.

33 **Exception to Pre-emptive Rights**

The provisions of clauses 32(a) to 32(n) do not apply to a transfer:

- (a) to a person who is a spouse, parent, sibling or child of a member (being a natural person) or any children or remoter issue of those persons;
- (b) to a trustee of a trust, the beneficiaries of which are exclusively persons in this Clause 33 and their Related Corporations;
- (c) by a trustee to a beneficiary of the trust who is the spouse, parent, sibling, child or remoter issue of the person who has Effective Control of the trustee;
- (d) to which all of the members have provided their written consent;
- (e) to a company, all the shares in which are beneficially owned by a person or persons in this Clause 33; and
- (f) to a Related Corporation of the Transferor which, prior to the transfer, provides a written deed poll to the Company to the effect that if at any time it ceases to be a Related Corporation of the Transferor it will transfer the shares back to the Transferor or to another Related Corporation of the Transferor.

FORFEITURE OF PARTLY-PAID SHARES

34 **Forfeiture for Non-Payment of Calls**

If a member fails to pay any call or instalment of a call on the day appointed for payment, the Directors may, for so long as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the unpaid amount of the call or instalment, together with any interest which may

have accrued and all costs, expenses or damages that may have been incurred by reason of the non-payment or late payment of the call or instalment.

35 Notice of Forfeiture

The notice must:-

- (a) name a further day (at least fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (b) state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be forfeited.

36 Non-Compliance with Notice

- (a) If the requirements of a notice served under clause 34 are not complied with, any share in respect of which the notice has been given may at any time after the date specified for payment in the notice, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- (b) A forfeiture of shares under sub-clause (a) includes all dividends, interest and other money payable by the Company in respect of the forfeited shares and not actually paid before the forfeiture.
- (c) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares and, except as otherwise provided by this constitution, the forfeiture of a share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited share and all other rights incidental to the share.

37 Sale of Forfeited Shares

- (a) A forfeited share may be sold or otherwise disposed of on the terms and in the manner that the Directors think fit.
- (b) The Directors may cancel a sale or disposition at any time before the forfeiture on such terms as they think fit.
- (c) On sale of a forfeited share or shares, the balance remaining after deducting the amount owed to the Company by the person whose shares were forfeited shall be returned to that person.

38 Continuing Liability to Pay

- (a) The person whose shares have been forfeited remains liable to pay to the Company all money which, at the date of forfeiture, was payable by the person to the Company in respect of the shares (together with interest at the rate determined by clause 24 from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of such interest).
- (b) The liability ceases if and when the Company receives payment in full of all such money in respect of the shares.

39 Evidence of Forfeiture

A statutory declaration in writing that the declarant is a director of the Company or the Company Secretary, and that a share in the Company has been forfeited on a date stated in the declaration, is conclusive evidence of the facts stated in the statutory declaration as against all persons claiming to be entitled to the share.

40 Transfer of Forfeited Shares

- (a) A forfeited share becomes the property of the Company and the Directors may sell, reissue or otherwise dispose of the share in any manner they think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former member being credited as paid up.

- (b) The Company may receive the consideration, if any, given for a forfeited share on any sale or other disposition of the forfeited share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (c) The person to whom the share is sold or disposed of will be registered as the holder of the shares, and is not bound to see to the application of any purchase money.
- (d) The title to the share will not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

41 **Forfeiture for Non-Payment of Deemed Calls**

The provisions of this constitution in relation to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable on allotment or at a fixed time as if the same had been payable by virtue of a call duly made and notified.

GENERAL MEETINGS

42 **Convening Meetings**

- (a) Any director may call a meeting of members.
- (b) The Directors will call a meeting of members if requested by the members as provided by the Act.

43 **Notice of Meeting**

- (a) Subject to the provisions of the Act relating to agreements for shorter notice, at least twenty-one days' written notice (not including the day on which the notice is served or deemed to be served, but including the day of the meeting for which notice is given) must be given of any meeting of members.
- (b) The notice must be given to all persons who are entitled to receive such notices from the Company and must:-
 - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (ii) state the general nature of the meeting's business; and
 - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
 - (iv) if a member is entitled to appoint a proxy, contain a statement setting out the following information;
 - (A) that the member has a right to appoint a proxy;
 - (B) whether or not the proxy needs to be a member of the Company;
 - (C) that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

44 **Place of Meeting**

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

RESOLUTIONS WITHOUT MEETINGS

45 Written Resolutions

- (a) The Company may pass a resolution without a general meeting being held if all members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by members if the wording of the resolution statement is identical on each copy.
- (c) The resolution is passed when the last member signs.
- (d) If a share is held jointly, each of the joint members must sign.
- (e) A member may be deemed to have signed a document in accordance with this clause by e-mail (or other means) if that member has at any time provided the Company with notice that he or she may use e-mail (or other means) to sign such documents, and that notice contains the e-mail addresses and electronic signatures (if any) the member will use for such purpose, or such other information the Company requires, as determined by the Directors, to be able to identify the deemed signature as being that of the member.
- (f) The receipt by the Company of a deemed signature of a member which complies with the notice given by the member in accordance with sub-clause (e) shall be conclusive evidence that the member has assented to the relevant resolution.
- (g) The provisions of this clause do not apply to a resolution to remove the auditor.

46 Sole Member Resolutions

If the Company has only one member then it may pass a resolution by the member recording the resolution and signing the record.

PROCEEDINGS AT GENERAL MEETINGS

47 Quorum

- (a) The quorum for a meeting of members is two members except where there is only one member and in such circumstances the quorum will consist of one member. The quorum must be present at all times during the meeting.
- (b) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.

48 Proxies or Representatives in Quorum

In determining whether a quorum is present:-

- (a) individuals attending as proxies or under power of attorney or as representatives of bodies corporate are counted;
- (b) if a member has appointed more than one proxy, power of attorney or representative then only one of them is counted; and
- (c) if an individual is attending, both as a member and as a proxy or attorney under power or body corporate representative, the individual is counted only once.

49 Adjournment for Lack of Quorum

If a meeting of the members of the Company does not have a quorum present within thirty minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date, time and

place the Directors specify. If the Directors do not specify one or more of these things, then the meeting is adjourned to:-

- (a) if the date is not specified – the same day in the next week; and
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

50 Lack of Quorum at Adjourned Meeting

If no quorum is present at the resumed meeting within thirty minutes after the time for the meeting, then:-

- (a) if the meeting was called by the members, the meeting is dissolved;
- (b) in all other cases, the member or members present are a quorum.

51 Chair of General Meeting

(a) The chair, if any, of the Directors will act as chair at every general meeting of the Company.

(b) If:-

- (i) there is no such chair;
- (ii) the chair is not present within fifteen minutes after the time appointed for the holding of the meeting; or
- (iii) the chair is unwilling to act,

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

52 Adjournment Generally

(a) At a meeting at which a quorum is present, the chair may, with the consent of the meeting (and will if so directed by the meeting), adjourn the meeting to another time and, if the chair thinks fit, to another place.

(b) No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(c) When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

53 Conduct of General Meetings

Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.

54 Putting of Resolutions

(a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.

(b) Before a vote is taken the chair must inform the meeting whether proxies have been received and how those proxies are to be cast.

(c) A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded. A poll may be demanded by:-

- (i) at least three members entitled to vote on the resolution; or
- (ii) members with at least five per cent of the votes that may be cast on the resolution on a poll;
or
- (iii) the chair.

The poll may be demanded before a vote is taken or before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

55 Result on Show of Hands

On a show of hands, a declaration by the chair and entry in the minute book of the Company is conclusive evidence of the result. Neither the chair nor the minutes need state the number or proportion of the votes recorded in favour or against the resolution.

56 Demand for Poll

- (a) A poll may be demanded on any resolution including the election of the chair or the adjournment of a meeting.
- (b) If a poll is demanded on a matter other than the election of the chair or the question of adjournment:-
 - (i) it must be taken when and in the manner the chair directs;
 - (ii) any other business of the meeting can be transacted before the poll demanded is carried out; and
 - (iii) if directed by the chair of the meeting, there may be an interval or adjournment prior to the poll.
- (c) A poll on the election of the chair or on the question of an adjournment must be taken immediately.
- (d) A demand for a poll may be withdrawn.

57 Chair's Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

58 Votes of Members

Subject to any rights or restrictions attached to any class of shares, at a meeting of members of the Company:-

- (a) on a show of hands, each person present who is a member or a representative of a member has one vote; and
- (b) on a poll, each member present in person or by proxy or by power of attorney or representative has one vote for each share they hold.

59 Votes of Joint Holders

If a share is held jointly and more than one member votes in respect of their share, only the vote of the member whose name appears first in the register of members counts.

60 Votes of Members of Unsound Mind

A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by the member's committee or trustee or by such other person as properly has the management of the member's estate, and any such committee, trustee or other person may vote by proxy or attorney.

61 Entitlement to Vote

No member is entitled to vote at any general meeting unless all calls or other sums presently payable by the member in respect of shares in the Company have been paid.

62 Disallowance of Vote

A challenge to a right to vote at a meeting of members:-

- (a) may only be made at the meeting; and

- (b) must be determined by the chair whose decision is final.
Every vote not disallowed by the chair under this clause is valid for all purposes.

REPRESENTATION AT GENERAL MEETINGS

63 Representatives

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
- (i) in person, or where a member is a body corporate, by its representative;
 - (ii) by proxy; or
 - (iii) by attorney.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

64 Authority of Representative

- (a) Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Act, an appointment will be taken to confer authority:
- (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (ii) to speak on any proposed resolution on which the proxy, attorney or representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
 - (iv) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting;
 - (C) to act generally at the meeting; and
 - (v) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (b) Where a member appoints two proxies or attorneys, the following rules apply:
- (i) each proxy or attorney, as the case may be, may exercise half of the member's voting rights if the appointment does not specify a proportion or number of the member's voting rights the proxy or attorney may exercise;
 - (ii) on a show of hands, neither proxy or attorney may vote unless the instruments appointing the proxies or attorneys identify which proxy or attorney is authorised to vote on a show of hands and which proxy or attorney is not so authorised; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.

65 Instrument Appointing Representative

- (a) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.

- (b) An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointor or the appointor's attorney.
- (c) Subject to clause 65(d), a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed, or a certified copy of the authority are:
 - (i) received at the registered office of the Company, a fax number at the Company's registered office or at such other place, fax number or electronic address specified for that purpose in the notice calling the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
 - (ii) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (iii) in the case of a poll, produced when the poll is taken.
- (d) The Directors may waive all or any of the requirements of clauses 65 (b) and/or (c) and in particular may, upon the production of such other evidence as the Directors require to prove the validity of the appointment of a proxy or attorney, accept:
 - (i) an oral appointment of a proxy or attorney;
 - (ii) an appointment of a proxy or attorney which is not signed or executed in the manner required by clause 65(b); and
 - (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.

66 **Validity of Representative's Votes**

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy or attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney votes:
 - (i) the appointing member dies; or
 - (ii) the member subsequently becomes mentally incapacitated; or
 - (iii) the member revokes the proxy's appointment; or
 - (iv) the member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the member transfers the share in respect of which the proxy was given.
- (b) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.

DIRECTORS: APPOINTMENT, ETC.

67 **First Directors**

The first directors appointed are the persons specified with their consent as proposed directors in the application for the Company's registration.

68 **Number of Directors**

- (a) Unless otherwise determined by the Company in general meeting, the number of directors will not be less than one nor more than nine.
- (b) At least one of the directors must be an Australian resident.

69 **Appointment of Directors**

Subject to clause 68, the Directors have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors.

70 Appointment of Directors by Sole Director

If the Company has only one director, then that director may appoint another director by recording the appointment and signing the record.

71 Appointment and Removal of Directors by Company

Subject to clause 68, the members of the Company may by resolution remove any director and may by resolution appoint any person as a director.

72 Remuneration of Directors

- (a) Each director is entitled to such remuneration out of the funds of the Company as the determined by the Company by resolution.
- (b) For the purposes of this constitution, the amount fixed by the Company as remuneration for a director will not include any amount paid by the Company or related body corporate:
 - (i) to a superannuation, retirement or pension fund for a director so that the Company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
 - (ii) for any insurance premium paid or agreed to be paid for a director under clause 129.
- (c) The remuneration of a director:
 - (i) may be a stated salary or a fixed sum for attendance at each meeting of Directors or both; or
 - (ii) may be a share of a fixed sum determined by the Company in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,
 and if it is a stated salary under clause 72(c)(i) or a share of a fixed sum under clause 72(c)(ii), will be taken to accrue from day to day.
- (d) In addition to his or her remuneration under clause 72(a), a director is entitled to be paid all travelling and other expenses properly incurred by that director in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the Directors or of committees of the Directors.
- (e) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the Company, the Directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under clause 72(a).
- (f) Nothing in clause 72(a) restricts the remuneration to which a director may be entitled as an officer of the Company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under clause 72(a).
- (g) The Directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.

73 Share Qualifications

- (a) A director is not required to hold any shares of the Company to qualify for appointment as a director unless determined otherwise by the members of the Company by resolution.
- (b) A director is entitled to receive notices of general meetings and attend and speak at general meetings even though that director is not a member of the Company.

74 Vacation of Office of Director

- (ii) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (iii) sign any document relating to that contract or arrangement or proposed contract or arrangement the Company may execute;
- (e) Clause 85(d) does not apply if, and to the extent that, it would be contrary to the Act.

86 **Disclosure of Interests**

- (a) A director must declare the nature of the interest the director has in any contract or arrangement or proposed contract or arrangement or any other material personal interest in a matter relating to the affairs of the company at the meeting of the Directors at which the contract, arrangement or matter is first taken into consideration if the interest exists at the time of the meeting or, in any other case, at the first meeting of the Directors after the director acquires the interest unless the Act specifies that notice does not need to be given.
- (b) If a director becomes interested in a contract or arrangement after it is made or entered into, the declaration of the interest required by sub-clause (a) must be made at the first meeting of the Directors held after the director acquires the interest.

87 **General Disclosure**

- (a) A general notice that a director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under clause 86 of a director's interest.
- (b) After a director gives a general notice under sub-clause (a), it is not necessary for that director to give a special notice relating to any particular transaction with that firm or company.

88 **Recording Disclosures**

The Company Secretary is obliged to record in the minutes any declaration made or any general notice given by a director under clauses 86 and 87.

89 **Alternate Directors**

Any director with approval of the Directors may appoint another person as an alternate to exercise some or all of the director's powers for a specified period and:-

- (a) if the appointing director requests the Company to give the alternate notice of Directors meetings, the Company must do so;
- (b) when an alternate exercises the director's powers, the exercise of the power is as effective as if the powers were exercised by the director;
- (c) the alternate shall not be required to meet the share qualifications for directors (if any);
- (d) the Company shall not be required to pay the alternate any remuneration but can be paid for expenses incurred as for other directors under Clause 72(d);
- (e) the appointing director may terminate the alternate's appointment at any time; and
- (f) an appointment or its termination must be in writing with a copy given to the Company.

90 **Quorum**

Unless the Directors determine otherwise or there is only one director, the quorum for a Directors meeting is two directors and the quorum must be present at all times during the meeting.

91 **Chair of Directors Meetings**

- (a) The Directors may elect a director to chair their meetings and may determine the period for which that director is to be the chair.
- (b) The Directors must elect a director present at the meeting to chair a meeting, or part of it, if:-

- (i) a director has not already been elected to chair the meeting; or
- (ii) a previously elected chair is not available within fifteen minutes after the time appointed for holding the meeting or declines to act for the meeting or the part of the meeting.

92 Delegation to Committees

- (a) The Directors may delegate any of their powers to committees consisting of such directors as the Directors think fit and such delegation shall be recorded in the minutes.
- (b) A committee must:-
 - (i) conform to any regulations that may be imposed on it by the Directors in exercising the powers delegated by the Directors; and
 - (ii) exercise the powers delegated to it in accordance with any directions of the Directors.

The effect of a committee exercising a power consistently with this clause is the same as if the Directors exercised the power.

93 Conduct of Committee Meetings

- (a) A committee may elect a chair of its meetings. If no such chair is elected, or if at any meeting the chair is not present within fifteen minutes after the time appointed for holding the meeting, the members present at the meeting may elect one of their number to be chair of the meeting.
- (b) A committee may meet and adjourn as it thinks proper.

94 Votes at Directors and Committee Meetings

A resolution of the Directors or a committee must be passed by a majority of votes of the directors entitled to vote on the resolution. In the case of an equality of votes the chair has a second or casting vote.

95 Delegation to Individual Directors

- (a) The Directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.
- (c) Acceptance of such a delegation may, if the Directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of clause 72(e).

96 Validity of Directors' Acts

- (a) An act done by a person acting as a director or by a meeting of Directors or a committee of Directors attended by a person acting as a director is not invalidated by reason only of:-
 - (i) a defect in the appointment of the person as a director;
 - (ii) the person being disqualified to be a director or having vacated office; or
 - (iii) the person not being entitled to vote,
 if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

97 Written Resolution – Two or More Directors

- (a) If:
 - (i) all of the Directors, other than:
 - (A) any director on leave of absence approved by the Directors;
 - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) any director who the Directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (ii) the directors who assent to the document would have constituted a quorum at a meeting of Directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Directors.

- (b) Separate documents may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last director signs.

98 **Sole Director Resolutions**

If the Company has only one director, that director may:-

- (a) pass a resolution by recording it and signing the record; and
- (b) make a declaration by recording it and signing the record.

Recording and signing the declaration satisfies any requirement of the Act that the declaration be made at a Directors meeting.

99 **Manner of Holding Meetings**

A Directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw the director's consent within a reasonable period before the meeting.

MANAGING DIRECTORS

100 **Appointment of Managing Director**

The Directors may appoint one or more directors to the office of managing director of the Company for the period, and on the terms (including as to remuneration), as the Directors see fit.

101 **Cessation of Appointment**

A person ceases to be managing director if they cease to be a director.

102 **Powers of Managing Director**

- (a) The Directors may:-
 - (i) confer upon a managing director any of the powers exercisable by the Directors upon such terms and conditions and with such restrictions as they may think fit; and
 - (ii) authorise the managing director to delegate all or any of the powers, discretions and duties conferred on the managing director.
- (b) An act done by a person acting as the managing director is not invalidated by reason only of:-
 - (i) a defect in the person's appointment as a managing director; or
 - (ii) the person being disqualified to be a managing director;
 if that circumstance was not known by the person when the act was done.

103 **Appointment, Removal and Powers**

The Directors may revoke, withdraw, alter or vary:-

- (a) an appointment; or
- (b) all or any of the powers conferred on the managing director.

ASSOCIATE DIRECTORS

104 Appointment, Removal and Powers

- (a) The Directors may appoint any person to be an associate director and may at any time cancel appointment of an associate director.
- (b) The Directors may fix, determine and vary the powers, duties and remuneration of any associate director.
- (c) An associate director is not required to hold any shares to qualify for appointment nor has any right to vote at any meeting of the Directors except by the invitation and with the consent of the Directors.

SECRETARY

105 Appointment, Removal & Powers

- (a) The Directors may, and if required by the Act will, appoint one or more Company Secretaries for the term, at the remuneration, and upon the conditions as they think fit.
- (b) Any Company Secretary appointed by the Directors may be removed by the Directors.

EXECUTION OF DOCUMENTS

106 Common Seal

The Company may have a common seal. If it does then:-

- (a) the common seal must comply with the Act;
- (b) the Directors will provide for the safe custody of the common seal; and
- (c) the seal may only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that respect.

107 Execution under Common Seal

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:-

- (a) two directors of the Company;
- (b) a director and a Company Secretary;
- (c) a director nominated for that purpose by the Directors; or
- (d) if the Company has a sole director who is also the sole Company Secretary or a sole director and no secretary – that director.

108 Execution without Common Seal

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

- (a) two directors of the Company;
- (b) a director and a Company Secretary;
- (c) a director nominated for that purpose by the Directors; or
- (d) if the Company has a sole director who is also the sole Company Secretary or a sole director and no secretary – that director.

109 Directors' Interests

A director may sign a document to which the seal of the Company is fixed even if the director is interested in the contract or arrangement to which the document relates.

ACCOUNTS & RECORDS

110 Accounting Records

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

111 Access to Records

- (a) The Directors will from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of members not being directors.
- (b) No member (other than a director) has any right to inspect any accounting or other records of the Company except as conferred by statute or as authorised by the Directors or by a resolution passed at a general meeting.

DIVIDENDS AND RESERVES

112 Determination or declaration of Dividends

Subject to clause 114, the Directors may determine or declare that a dividend is payable and fix:-

- (a) the amount;
- (b) the time for payment (but if no time is fixed, the dividend is payable immediately upon the dividend being declared); and
- (c) the method of payment.

The method of payment may include the payment of cash, the issue of shares, the grant of options or the transfer of assets.

113 Interim Dividends

Subject to clause 112, the Directors may determine or declare and pay to the members any interim dividends.

114 Circumstances in which a dividend may be paid

The Company may only pay a dividend in accordance with the requirements of the Act, including but not limited to the requirements set out in section 254T of the Act.

115 Interest on Dividends

Interest is not payable on a dividend.

116 Reserves

- (a) Before recommending any dividend, the Directors may set aside out of the profits of the Company such sums as they think proper as reserves which will be applied by the Directors, at their discretion, for any purpose to which the profits of the Company may be properly applied.
- (b) Pending any application of the reserves, the Directors may, at their discretion, employ the reserves in the business of the Company or invest the reserves in such investments (other than shares in the Company) as the Directors think fit.
- (c) The Directors may carry forward any profits which they consider ought not to be distributed as dividends without transferring those profits to reserve.

117 Entitlement to Dividends

Subject to the rights of any persons entitled to shares with special rights as to dividends, all dividends will be declared and paid to the members in proportion to their shares.

118 Deductions from Dividends

The Directors may deduct from any dividend payable to any member any sums of money then presently payable by the member to the Company on account of calls or otherwise in relation to the shares of the Company.

119 Dividends in Specie

- (a) The Directors may, in declaring a dividend or bonus, direct payment of that dividend or bonus to be wholly or partly by the distribution of specific assets including paid-up shares, debentures or debenture stock of the Company or any other company and the Directors will give effect to that resolution.
- (b) Where any difficulty arises in regard to a distribution made under sub-clause (a), the Directors may settle the same as they think fit, and fix the value for distribution of all or part of such specific assets and may determine that cash payments will be made to any members based upon the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the Directors.

120 Payment of Dividends

- (a) Any dividend, interest, or other money payable in cash in respect of shares may be paid in any manner determined by the Directors including:-
 - (i) by cheque or warrant sent through the post directed to:-
 - (A) the registered address of the member;
 - (B) in the case of joint members, to the registered address of the joint member who is first named on the register of members; or
 - (C) to such person and to such address as the member or joint members have directed in writing; or
 - (ii) directly crediting the account nominated by the member or joint members from time to time.
- (b) Every cheque or warrant will be made payable to the order of the person to whom it is sent.
- (c) Any one of two or more joint members may give effectual receipts for any dividends, interest, or other money payable in respect of the shares held by them as joint members.

CAPITALISATION OF PROFITS**121 Capitalisation of Reserves**

- (a) The Directors may resolve to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution.
- (b) If the Directors resolve to capitalise an amount under sub-clause (a), the capitalised amount will be applied for the benefit of the members in the same proportion to which those members would have been entitled if the capitalised amount was distributed by way of dividend and in any of the ways specified in sub-clause (c).
- (c) The ways in which a capitalised amount may be applied for the benefit of members under sub-clause (b) are:-
 - (i) in paying up any amount unpaid on shares held by members;
 - (ii) in paying up in full unissued shares or debentures to be issued to members as fully paid; or
 - (iii) partly as mentioned in sub-paragraph (i) and partly as mentioned in sub-paragraph (ii).

122 Powers of Directors

- (a) Whenever a resolution under clause 121 has been passed, the Directors will make all appropriations and applications of the undivided profits resolved to be capitalised by that resolution, and all allotments and issues of fully paid shares or debentures, if any, and generally do all acts and things required to give effect to that resolution.
- (b) The Directors have full power to:-
- (i) make provision by the issue of fractional certificates or by payment in cash where shares or debentures become issuable in fractions; and
 - (ii) authorise any person, on behalf of all the members entitled to any further share or debenture upon the capitalisation, to enter into an agreement with the Company providing for:-
 - (A) the allotment to them respectively, of any further shares or debentures, credited as fully paid up, 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, of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the profits resolved to be capitalised, and any agreement made under an authority referred to in paragraph (ii) will be effective and binding on all such members.

NOTICES**123 Giving of Notices**

The Company may give notice to any director or member:-

- (a) personally; or
- (b) by sending it by post to the address of the director as notified to the Directors or the address for the member in the register of members or the alternative address (if any) nominated by the director or member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the director or the member.

Any notice sent by post is taken to be given two Business Days after it is posted. Any notice sent by facsimile or other electronic means is taken to be given on the Business Day after it is sent.

124 Notice to Joint Members

Notice to joint members must be given to the joint member first named in the register of members.

125 Notice to Representatives

A notice may be given by the Company to persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the bankrupt, or by any similar description, at the address, if any, within Australia supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

126 Entitlement to Notices

Notice of every general meeting will be given in any manner authorised by this constitution to:-

- (a) every member except those members who (having no registered address within Australia) have not supplied to the Company an address for the giving of notices to them;

- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for the death or bankruptcy, would be entitled to receive notice of the meeting;
- (c) the directors of the Company;
- (d) the Company Secretary or Secretaries; and
- (e) the auditor for the time being of the Company.

No other person is entitled to receive notices of general meetings.

WINDING UP

127 Distribution of Assets

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide amongst the members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not), subject to the rights of any persons entitled to shares with special rights as to the distribution of assets on winding up.
- (b) The Company may for that purpose set such value as the liquidator considers fair upon any property to be divided amongst the members and may determine how the division will be carried out as between the members or different classes of members.
- (c) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the members as the liquidator with the sanction of a special resolution thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

INDEMNITY AND INSURANCE

128 Extent of Indemnity

The Company will indemnify (either directly or through one or more interposed entities) any person who is or has been a director, Company Secretary or executive officer of the Company and, if so resolved by the Directors, the auditor of the Company, out of the funds of the Company against the following:-

- (a) any liability to another person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
- (b) any liability for costs and expenses incurred by that person:-
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the 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 the person under the Act.

129 Insurance

- (a) The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an officer of the Company or of a related body corporate of the Company against a liability:-
 - (i) incurred by the person in his capacity as an officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or otherwise arising out of the officer holding such office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 182 and 183 of the Act; or

- (ii) for the costs and expenses incurred by that person in defending proceedings, whatever their outcome.

AUDIT

130 Audit

An auditor or auditors shall be appointed by the Directors for the Company if the Company is required to appoint an auditor by the Act and, if not so required, then the Directors will have the discretion to appoint an auditor or auditors.

DIVISION 7A LOAN AGREEMENT

131 Loans from the Company to Members

- (a) If the Company makes a loan to a member at any time (or a payment that is converted into a loan under sub-clause 131(m)) and that loan is not repaid by the earlier of the due date for lodgment and the date of lodgment of the Company's return of income for the year of income in which the loan is made, then this clause applies to that loan until the loan is repaid in full, unless the loan is otherwise the subject of a written agreement or the Company and the member otherwise agree in writing that this clause should not apply to the loan.
- (b) Each loan made to a member is to be treated as a separate loan and is not to be amalgamated with other loans to that member, unless the member and the Company agree in writing that those loans are to be amalgamated.
- (c) A loan includes:
 - (i) an advance of money;
 - (ii) a provision of credit or any other form of financial accommodation;
 - (iii) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount;
 - (iv) any amount converted from a payment to a loan within the meaning of Division 7A;
 - (v) any amount previously unsecured that is subsequently secured over real property ;
 - (vi) any amount previously secured over real property that is subsequently converted to an unsecured loan; and
 - (vii) a transaction (whatever its terms or form) which in substance effects a loan of money.
- (d) An unsecured loan must be repaid to the Company in full within seven years after it is received by the member, or such other period as determined by the *Income Tax Assessment Regulations 1936* (Cth), unless it is converted to a Secured Loan for a cumulative term not exceeding 25 years as determined under sub-clause 131(l).
- (e) A Secured Loan must be repaid to the Company in full within twenty-five years after it is received by the member, or such other period as determined by the *Income Tax Assessment Regulations 1936* (Cth), unless it is converted to an unsecured loan for a cumulative term not exceeding 7 years or a lesser term as determined under sub-clause 131(l).
- (f) Subject to sub-clause 131(g), the member must pay interest on the outstanding balance of any borrowed amount at the benchmark interest rate prescribed by or under Section 109N of the *Income Tax Assessment Act 1936* (Cth), such interest which is to be computed daily and paid:
 - (i) annually in arrears on the 30th day of June in each year;

- (ii) at the written request of the Company, monthly in arrears on the last day of each calendar month; or
- (iii) at any other time approved in writing by the Company.

Any interest accrued on any amount repaid between the last date for payment of interest and the date of repayment shall be paid in full on the date of repayment.

- (g) The member shall not be required to pay interest, and no interest shall accrue, between the time of the making of the loan and 30 June following the making of the loan if the member and the Company agree that no interest shall be payable during this time, and if no interest is in fact paid during this time they shall be taken to have so agreed.
- (h) The member (or another entity on behalf of the member, or both) must make the minimum repayments of principal and interest prescribed by or under Division 7A of the *Income Tax Assessment Act 1936* (Cth) in each financial year after the year in which the loan under this clause is made, as calculated under Section 109E(6) of the *Income Tax Assessment Act 1936* (Cth).
- (i) If the member becomes entitled to the payment of any dividend by the Company then, unless the member and Company otherwise agree in writing, the dividend is to be set off against the amount of any loans and any accrued interest outstanding at the date of payment of the dividend.
- (j) The member may repay any loan in full or make payments greater than the minimum repayments specified in this clause on the last day of any calendar month in which the loan remains outstanding. Interest on any amount repaid in reduction of a loan shall abate from the date of such repayment.
- (k) Subject to sub-clause 131(h), all moneys paid by the member to the Company under this clause will be applied firstly in payment of any outstanding interest, secondly in payment of other moneys owing under this clause and thirdly in reduction of the borrowed amount.
- (l) Subject to this clause, the member may request that the Company convert an unsecured loan into a Secured Loan, or allow a Secured Loan to be refinanced with an unsecured loan (in this sub-clause "new loan"). If the Company agrees to the member's request, the term of the new loan is determined as follows:
 - (i) converting an existing unsecured loan into a Secured Loan – 25 years less the period of the term already expired in the existing unsecured loan; and
 - (ii) converting an existing Secured Loan into an unsecured loan – If the period of the existing loan ("actual period") is more than 18 years the maximum term of the new loan will be the difference between 25 years and the actual period. If the actual period is less than 18 years the maximum term of the new loan must not exceed 7 years.
- (m) Subject to this clause, if the Company makes a payment within the meaning of Division 7A of the Act to the member, the member may request that the Company deem the payment to be a loan. Such request must be made in writing and the Company must not unreasonably decline the request. Provided the Company agrees in writing, the payment will be deemed to be a loan and be deemed to have been advanced at the time the member beneficially received title to the relevant payment or property.

COMPANY CAN BE A SPECIAL PURPOSE COMPANY**132 Variations when company acting solely as a superannuation fund trustee**

During any period in which the Company acts solely as trustee of a regulated superannuation fund under the *Superannuation Industry (Supervision) Act 1993* (Cth) then, notwithstanding any powers contained within this constitution, no shares in the Company shall carry any right to a dividend, nor shall any of the members in the Company be entitled to participate in the surplus profits or assets of the Company upon a winding-up of the Company unless permitted by the Act, the *Superannuation Industry (Supervision) Act 1993* (Cth), any regulations made pursuant to that legislation, or such legislation or regulations as amended, substituted or replaced from time to time.

SCHEDULE 1

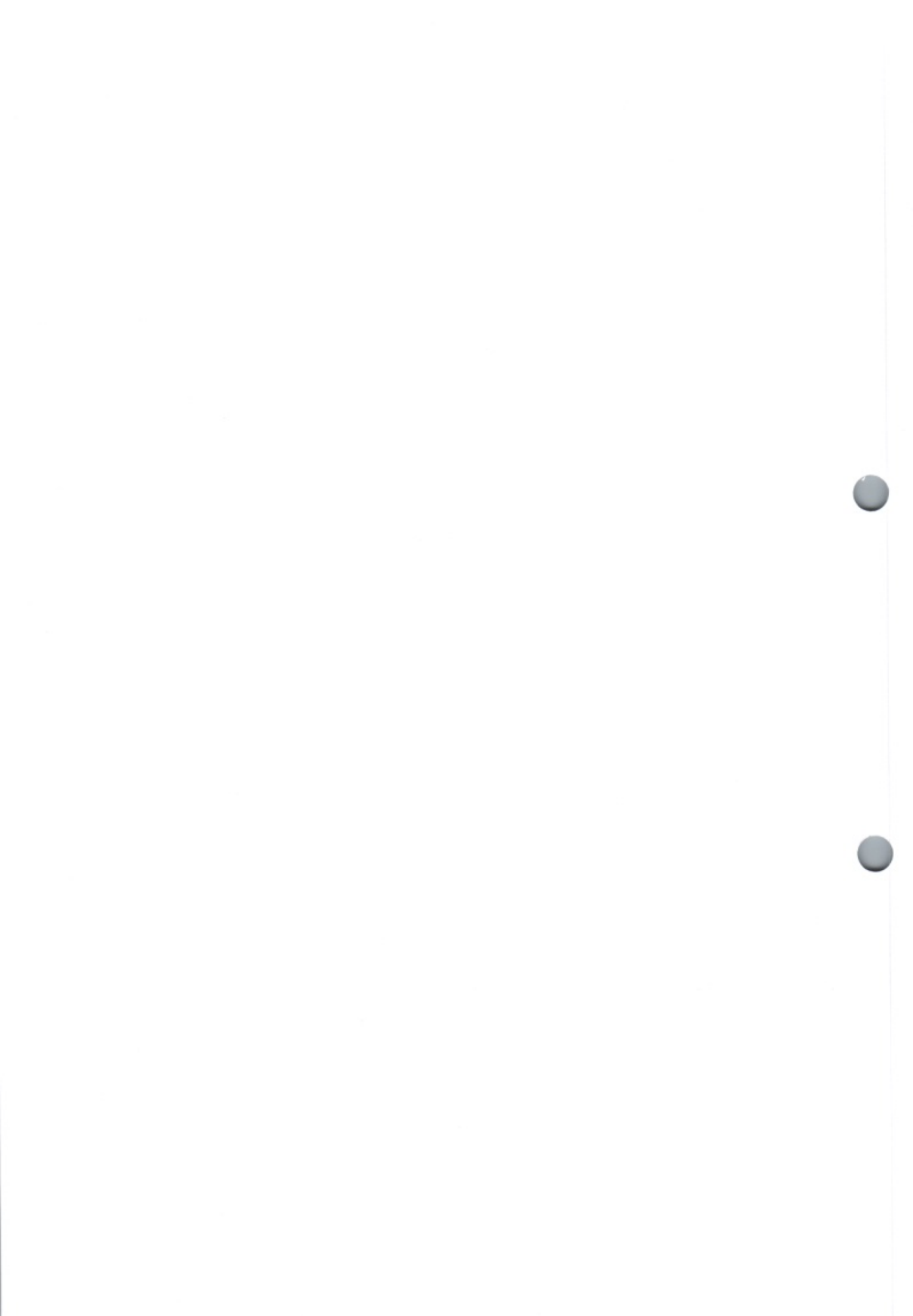
The following are suggested rights attaching to classes of shares, in the absence of any determination by the Directors or members to the contrary.

Suggested share classes

- (a) Without limiting any power to issue new or vary existing shares, issued shares in the Company may include the following designated classes:-
- (i) Ordinary shares
 - (ii) "AA" Class shares
 - (iii) "BB" Class shares
 - (iv) "CC" Class shares
 - (v) "DD" Class shares
 - (vi) "EE" Class shares
 - (vii) "FF" Class shares
 - (viii) "GG" Class shares
 - (ix) "HH" Class redeemable preference shares
 - (x) "II" Class redeemable preference shares
 - (xi) "JJ" Class redeemable preference shares
 - (xii) "KK" Class redeemable preference shares
- (b) Unless otherwise determined, the following rights, privileges and conditions attach to each "AA" Class share:-
- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) the right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (c) Unless otherwise determined, the following rights, privileges and conditions attach to each "BB" Class share:-
- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) the right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company but no right to participate in the division of surplus assets or profits of the company.
- (d) Unless otherwise determined, the following rights, privileges and conditions attach to each "CC" Class share:-
- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) no right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company but no right to participate in the division of surplus assets or profits of the company.
- (e) Unless otherwise determined, the following rights, privileges and conditions attach to each "DD" Class share:-

- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) no right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (f) Unless otherwise determined, the following rights, privileges and conditions attach to each "EE" Class share:-
- (i) no right to receive notice of, to attend, or to vote at any meeting of the company;
 - (ii) the right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company but no right to participate in the division of surplus assets or profits of the company.
- (g) Unless otherwise determined, the following rights, privileges and conditions attach to each "FF" Class share:-
- (i) no right to receive notice of, to attend, or to vote at any meetings of the company;
 - (ii) the right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (h) Unless otherwise determined, the following rights, privileges and conditions attach to each "GG" Class share:-
- (i) no right to receive notice of, to attend, or to vote at any meetings of the company;
 - (ii) no right to participate in the dividends (if any) declared on that share;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (i) Unless otherwise determined, the following rights, privileges and conditions attach to each "HH" Class redeemable preference share:-
- (i) no right to receive notice of, to attend, or to vote at any meetings of the company;
 - (ii) the Company may at any time and from time to time redeem any one or more of the said redeemable preference shares by giving seven days' notice in writing of the redemption to the registered holder of the redeemable preference share or shares, together with the amount paid up in respect of the shares to be redeemed, and such redemption shall take place immediately upon the expiry of seven days from the posting of the said notice of redemption;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company in priority to all other shares in the company but no right to participate in the division of any surplus assets or profits of the company;
 - (iv) the right to receive from the profits of the company as a first charge a non-cumulative preferential dividend at the rate of six percent (6%) per annum on the paid issue price of the "HH" Class redeemable preference shares held.
- (j) Unless otherwise determined, the following rights, privileges and conditions attach to all "II" Class redeemable preference shares:-
- (i) no right to receive notice of, to attend, and to vote at any meetings of the company;


- (ii) the Company may at any time and from time to time redeem any one or more of the said redeemable preference shares by giving seven days' notice in writing of the redemption to the registered holder of the redeemable preference share or shares, together with the amount paid up in respect of the shares to be redeemed, and such redemption shall take place immediately upon the expiry of seven days from the posting of the said notice of redemption;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company in priority to all other shares in the company except the "HH" Class redeemable preference shares but no right to participate in the division of any surplus assets or profits of the company;
 - (iv) the right to participate in the dividends (if any) declared on that share.
- (k) Unless otherwise determined, the following rights, privileges and conditions attach to all "JJ" Class redeemable preference shares:-
- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) the Company may at any time and from time to time redeem any one or more of the said redeemable preference shares by giving seven days' notice in writing of the redemption to the registered holder of the redeemable preference share or shares, together with the amount paid up in respect of the shares to be redeemed, and such redemption shall take place immediately upon the expiry of seven days from the posting of the said notice of redemption;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company in priority to all other shares in the company except the "HH" Class redeemable preference shares but no right to participate in the division of any surplus assets or profits of the company;
 - (iv) the right to participate in the dividends (if any) declared on that share.
- (l) Unless otherwise determined, the following rights, privileges and conditions attach to all "KK" Class redeemable preference shares:-
- (i) the right to receive notice of, to attend, and to vote at all meetings of the company in accordance with this Constitution;
 - (ii) the right to request the Company to redeem the redeemable preference share seven days' after the Company has received notice of the request for redemption, and such redemption shall take place immediately upon the expiry of the seven days from the receipt of the said notice of redemption and the Company shall payment for the redemption at that time;
 - (iii) the right to repayment of the paid issue price of such share in a winding up of the company in priority to all other shares in the company except the "HH" Class redeemable preference shares but no right to participate in the division of any surplus assets or profits of the company;
 - (iv) the right to participate in the dividends (if any) declared on that share.



SCHEDULE 2

AGREEMENT

Each of the undersigned, being the persons specified in the application for the Company's registration as a person who consents to become a member, agrees to the terms of this Constitution.

Full name and address of each member	Signature
ANDREW MARK SCOTT 14 KENNETT PLACE DAWESVILLE, WA 6211	

Dated this 7th day of September 2016.

