



NICHOLAS TOOLE PTY LTD

ACN: 628 382 392

**MEMBER RESOLUTION &
SPECIAL PURPOSE CONSTITUTION**

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Member resolution

Nicholas Toole Pty Ltd ACN 628 382 392

Constitution

- 1 The Company wishes to adopt a constitution in the form contained in Annexure 1.

Resolution

- 2 In accordance with section 136(1)(b) of the *Corporations Act 2001* (Cth), it is resolved to adopt a constitution in the form contained in Annexure 1 as the constitution for the Company.
- 3 It is resolved that the sole purpose of the Company is to act as trustee of a self-managed superannuation fund.

The Member

Signed by Nicholas Joseph Toole:



Nicholas Joseph Toole
Member

Dated: 24 August 2018

ANNEXURE 1

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NICHOLAS TOOLE PTY LTD

ACN 628 382 392

DEFINITIONS

In this document:

Term	Definition
Act	Means <i>Corporations Act 2001</i> (Cth).
Annuity	Has the same meaning as in the Law.
ASIC	Means the Australian Securities and Investments Commission.
Bankruptcy Act	Means the <i>Bankruptcy Act 1966</i> (Cth).
Benefit	Means any amount which is payable out of the Fund to or in respect of a SMSF Member.
Business Day	Means a day on which banks are open for general banking in the capital city of the state where the contract or act is being performed.
Circular Resolution	Means documents that: <ul style="list-style-type: none">(a) are signed by each person entitled to vote (including each joint Member);(b) are passed when the last person signs;(c) may be deemed to be signed by email; and(d) are valid if signed in counterpart if the wording of the resolution is identical on each copy.
Company	Means Nicholas Toole Pty Ltd ACN 628 382 392.
Complying Superannuation Fund	Means a SMSF which satisfies the definition of a complying superannuation fund under the Law.
Default Interest Rate	Means: <ul style="list-style-type: none">(a) if the Company has fixed a rate – the rate so fixed; and(b) in any other case – 12% per annum, accruing daily, calculated and payable at the end of each monthly period.
Directors	Means the directors of the Company, including alternate directors where applicable.
Event of Disqualification	Means: <ul style="list-style-type: none">(a) death;(b) the loss of lawful capacity through age, accident, or illness (evidence of which is by certificate of a registered medical practitioner);

Term	Definition
	<p>(c) the committing of an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act (excluding section 40(b) of the Bankruptcy Act);</p> <p>(d) a sequestration order being made against the person under section 43 of the Bankruptcy Act;</p> <p>(e) the person presenting a declaration of their intention to present a debtor's petition under section 54A of the Bankruptcy Act;</p> <p>(f) the person presenting a petition against themselves under section 55 of the Bankruptcy Act;</p> <p>(g) the person entering into a part X personal insolvency agreement under the Bankruptcy Act;</p> <p>(h) the person entering into a part IX debt agreement under the Bankruptcy Act;</p> <p>(i) if the person is a director of any company, the company being wound up by order of a court on the grounds of insolvency;</p> <p>(j) the appointment of an administrator of the person under section 436A or section 436C of the Act;</p> <p>(k) an order for the winding up of the person being made under sections 233, 459A, 459B or 461 of the Act;</p> <p>(l) a resolution being passed for the winding up of the person under section 491 of the Act;</p> <p>(m) the person being deregistered under sections 601AB or 601AC of the Act; or</p> <p>(n) judgement being entered against the person.</p>
Executive Officer	Means a person who is concerned in, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company).
Fund	Means a SMSF of which the Company is the trustee.
General Meeting	Means a meeting of Members under rule 15 and any special meeting of any class of Members under these rules or the Act.
Law	<p>Means any requirement under the following acts and regulations:</p> <p>(a) the SIS Act;</p> <p>(b) any regulations made under the SIS Act;</p> <p>(c) the Tax Act; and</p> <p>(d) any other legislation which the Company (in its capacity as trustee of the Fund) must comply with for the Fund to qualify as a Complying Superannuation Fund.</p>

Term	Definition
Legal Personal Representative	Has the same meaning as in the Tax Act.
Liability	Includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense.
Member	Means a registered holder of shares in the Company including persons who are recognised as such, if a Member suffers an Event of Disqualification.
Officer	Means: <ul style="list-style-type: none"> (a) a Director or Secretary of the Company; (b) an Executive Officer; (c) an employee who: <ul style="list-style-type: none"> (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or (ii) has the capacity to affect significantly the Company's financial standing; or (iii) the Directors are accustomed to acting in accordance with the instructions or wishes of (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company)
Ordinary Resolution	Means a resolution approved by more than 50% of Members entitled to vote at a General Meeting.
Pension	Includes a Benefit paid in accordance with the meaning of 'pension' under the Law.
Proportionate Voting Rule	Means that each Director or alternate Director is to hold that number of votes equal to 1 vote for each \$1 of the aggregate Value of a SMSF Member's Superannuation Interests they or the SMSF Member they represent holds in the SMSF.
Related Body Corporate	Has the same meaning as in the Act.
Replaceable Rules	Means the replaceable rules contained in the Act from time to time.
Seal	Means the common seal of the Company, if any, and includes any certificate seal of the Company.
Secretary	Means any person appointed to perform the duties of a secretary of the Company.
SIS Act	Means <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
SMSF	Means a complying regulated self managed superannuation fund, as defined under section 19 of the SIS Act.

Term	Definition
SMSF Member	Means a person who is a member of a Fund.
Special Resolution	Has the same meaning as in the Act.
Superannuation Benefit	Includes a payment, the transfer of an asset or a payment in kind, whether by way of a Superannuation Lump Sum or a Superannuation Income Stream from the SMSF to a SMSF Member or other person on behalf of a SMSF Member or deceased SMSF Member provided the superannuation laws allow.
Superannuation Income Stream	Means: (a) a Pension; (b) an Annuity; or (c) a Benefit payable in a form other than as a Superannuation Lump Sum, as allowed under the Law.
Superannuation Interest	Means any interest in a SMSF created under the superannuation laws and the rules of the SMSF.
Superannuation Lump Sum	Has the same meaning as in the Tax Act.
Tax Act	Means (as the context requires) either or both the <i>Income Tax Assessment Act 1936</i> (Cth) and the <i>Income Tax Assessment Act 1997</i> (Cth).
Value of a SMSF Member's Superannuation Interest	Means the value the Company acting as trustee of the SMSF determines in respect of a Member Superannuation Lump Sum Superannuation Interest or Member Superannuation Income Stream Superannuation Interest as those terms are defined under the rules of the SMSF and if there is no such determination by the trustee it is the value of the SMSF Member's particular Superannuation Interest at the time of the last audit of the Company plus any additions made to the Superannuation Interest less any deductions to the Superannuation Interest up to the time of the value of the SMSF Member's Superannuation Interest.

AGREED TERMS

1 REPLACEABLE RULES

- 1.1 The Replaceable Rules do not apply to the Company, instead the rules contained in this document apply.

2 INCONSISTENCY

- 2.1 Where any provision of this document conflicts, or is inconsistent with, any provision of the Act, this document will apply to the extent permitted by law.

3 LIABILITY OF MEMBERS

3.1 The Liability of Members is limited.

4 COMPANY ACTING AS TRUSTEE OF SMSF

4.1 If the Members resolve that the Company's sole purpose is to act as the trustee of a SMSF, then while that is the Company's sole purpose:

- (a) if, in order for the SMSF to qualify as a Complying Superannuation Fund, the Company's constitution must:
 - (i) prohibit an act from being done, then the act must not be done;
 - (ii) require an act to be done, then authority is given for that act to be done;
 - (iii) contain a provision and it does not otherwise contain that provision, then it is deemed to be included; or
 - (iv) not to contain a provision and it contains that provision, then it is deemed to be removed;
- (b) if any provision of this document is, or becomes, inconsistent with the SIS Act or the SMSF qualifying as a Complying Superannuation Fund, this document is deemed not to contain that provision;
- (c) this rule may only be amended if the amendment complies with the Act and SIS Act; and
- (d) the Company must not distribute any income or property to the Members.

4.2 Where the Company is acting as trustee of a SMSF:

- (a) the Proportionate Voting Rule is to apply. The Directors may at any Directors' meeting, in accordance with the Proportionate Voting Rule, decide upon the appropriate voting arrangements to apply for that meeting, any matter to be determined in the meeting or in respect of any future meetings or matters to be decided upon in those meetings;
- (b) a Director may appoint a person to act as that Director's proxy at any meeting of the Company or the SMSF; and
- (c) a resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

5 SHARE CLASSES

5.1 Holders of ordinary shares have the right:

- (a) to receive notice of, attend and vote at a General Meeting of the Company, on the basis of one vote for each share held;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share and to participate in the distribution of the surplus assets of the Company; and
- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of ordinary shares.

5.2 Holders of A shares have the right:

- (a) to receive notice of, attend and vote at a General Meeting of the Company, on the basis of one vote for each share held;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share and to participate in the distribution of the surplus assets of the Company ranking equally with ordinary shares; and
- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of A shares.

5.3 Holders of B shares have the right:

- (a) to receive notice of, attend and vote at a General Meeting of the Company, on the basis of one vote for each share held;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share and to participate in the distribution of the surplus assets of the Company ranking equally with ordinary shares; and
- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of B shares.

5.4 Holders of C shares have the right:

- (a) to receive notice of and to attend General Meetings of the Company; and
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share and to participate in the distribution of the surplus assets of the Company ranking equally with ordinary shares,

but do not have the right:

- (c) to receive dividends; or
- (d) to vote at a General Meeting of the Company.

5.5 Holders of D shares have the right:

- (a) to receive notice of, attend and vote at a General Meeting of the Company, on the basis of one vote for each share held;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share ranking equally with ordinary shares,

but do not have the right:

- (c) to receive dividends; or
- (d) in a winding up or reduction of capital of the Company to participate in the distribution of the surplus assets of the Company.

5.6 Holders of E shares have the right:

- (a) to receive notice of and to attend General Meetings of the Company;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share ranking equally with ordinary shares; and

- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of E shares,

but do not have the right:

- (d) to vote at a General Meeting of the Company; or
- (e) in a winding up or reduction of capital of the Company to participate in the distribution of the surplus assets of the Company.

5.7 Holders of F shares have the right:

- (a) to receive notice of and to attend General Meetings of the Company;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share ranking equally with ordinary shares; and
- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of F shares,

but do not have the right:

- (d) to vote at a General Meeting of the Company; or
- (e) in a winding up or reduction of capital of the Company to participate in the distribution of the surplus assets of the Company.

5.8 Holders of G shares have the right:

- (a) to receive notice of and to attend General Meetings of the Company;
- (b) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share and to participate in the distribution of the surplus assets of the Company ranking equally with ordinary shares; and
- (c) to receive dividends as determined from time to time by the Directors to be payable to the holders of G shares,

but do not have the right:

- (d) to vote at a General Meeting of the Company.

5.9 Holders of H shares have the following rights and are also subject to the following restrictions:

- (a) regardless of any provision contained in this document, the right to receive dividends as paid from time to time by and at the sole discretion of the Directors determined to be payable only to the holders of H shares, with the discretion independent of the exercise of discretion in relation to any other class of shares;
- (b) H shares do not have the right:
 - (i) to any entitlement to, interest in, or right in respect of any dividend that the Directors determine to be payable or that may be declared from time to time in respect of a H share until that dividend is actually paid to the holder of the H share, or their nominee;
 - (ii) to receive notice of, attend and vote at a General Meeting of the Company;

- (iii) in a winding up or reduction of capital of the Company to repayment of the capital paid up on that share; or
- (iv) in a winding up or reduction of capital of the Company to participate in the distribution of the surplus assets of the Company;
- (c) H shares are redeemable at the option of the holder or the Company;
- (d) the Company must give at least five Business Days prior written notice to the holder of a H share of the Directors' intention to redeem the H share;
- (e) the holder of a H share must give at least 20 Business Days prior written notice to the Company of their intention to have their H share redeemed by the Company; and
- (f) where a H share is redeemed, the amount payable by the Company on redemption will be any amount less than the issue price determined at the sole discretion of the Directors.

6 POWER TO ISSUE SHARES AND VARY RIGHTS

- 6.1 Subject to the Act and any rights previously conferred on the holders of any existing share the Directors may issue shares with any other rights and terms they determine in their absolute discretion.
- 6.2 Subject to the terms of issue of each class of share, the Directors may resolve to vary the rights attaching to any class of shares, with a Special Resolution of Members in the relevant class consenting to the variation.
- 6.3 The rights conferred upon the holders of the shares of any class issued with preferred or other rights are deemed not to be varied by the creation or issue of further shares ranking equally with the first mentioned shares.
- 6.4 The Company may pay brokerage or commission in accordance with the Act by way of any combination of:
 - (a) cash;
 - (b) allotment of fully paid shares; or
 - (c) allotment of partly paid shares.
- 6.5 Unless required by law, or as otherwise provided for in these rules, the Company need only to recognise absolute rights of share ownership, and can therefore ignore (for example) any equitable, contingent, future or partial interest in any share.

7 SHARE CERTIFICATES

- 7.1 The Company need only to provide a share certificate if a Member requests in writing. If so requested, the Company must:
 - (a) provide it within 20 Business Days;
 - (b) without charge; and

- (c) on the basis that one certificate for all shares registered in the requesting Member's name and the provision of one certificate for any shares held in joint names is sufficient.

8 LOANS TO MEMBERS

- 8.1 The Company may make loans to Members, and unless otherwise agreed in writing any unsecured loan by the Company to a Member, to the extent there is a distributable surplus as defined under the Tax Act, will be deemed to have been made on the terms of the document set out in Schedule 1.

9 CALLS

- 9.1 To the extent not otherwise set out in the terms of issue, the Directors may resolve to make calls on Members in respect of any money unpaid on shares.
- 9.2 The Directors must provide at least 10 Business Days' notice to Members confirming the amount and due dates of the call.
- 9.3 The Directors may differentiate between Members as to the amount of calls to be paid and the times of payment.
- 9.4 The Directors in their discretion may revoke or postpone a call at any time before the due date.
- 9.5 Members who own shares jointly are jointly and severally liable in relation to calls.
- 9.6 If a called sum is not paid by the due date, the Directors in their discretion may charge interest from the due date until payment at the Default Interest Rate.
- 9.7 Where the terms of issue of a share require a payment of a sum then:
 - (a) for the purposes of these rules, it is deemed to be a call duly made and payable on the due date set; and
 - (b) in case of non-payment, these rules apply as if the sum had become payable by virtue of a call made.
- 9.8 The Directors may accept from a Member any amount unpaid on a share, regardless of whether it has been called.
- 9.9 The Directors may authorise payment by the Company of interest at the Default Interest Rate on any amount so accepted, until the relevant amount becomes payable.

10 LIEN OVER SHARES

- 10.1 The Company, subject to the discretion of the Directors, has a first priority lien on every share that is not fully paid for all money, whether presently payable or not, and extending to all dividends payable whether:
 - (a) called or payable; or

- (b) presently payable by sole or joint holders or their Legal Personal Representative.
- 10.2 The Company, at the Director's discretion, may sell any shares which are the subject of a lien where:
- (a) any amount relating to the lien is presently payable;
 - (b) the Company has given the Member 10 Business Days written notice demanding payment.
- 10.3 Any sale under this rule:
- (a) may be authorised on behalf of the Member by the Directors;
 - (b) must be registered by the Company;
 - (c) gives title in the shares to the purchaser, regardless of any irregularity or invalidity in connection with the transfer;
 - (d) must result in the proceeds being applied by the Company in payment of all expenses in relation to the transfer, the amount presently payable with the residue (if any) paid to the Member immediately prior to the sale.

11 FORFEITURE

- 11.1 If a Member fails to pay any amount of a call, the Directors may serve a notice on the Member requiring payment.
- 11.2 The notice must:
- (a) confirm the amounts outstanding;
 - (b) provide at least 10 Business Days for payment;
 - (c) confirm that if the amount remains unpaid at the expiration of the period, the shares in respect of which the call was made are liable to be forfeited; and
 - (d) confirm that while the amount is unpaid, the Member may not vote at General Meetings.
- 11.3 The Directors may forfeit any shares once rule 11.1 has been followed and a forfeited share:
- (a) includes all unpaid dividends; and
 - (b) can be sold, disposed of or cancelled as the Directors determine.
- 11.4 A person whose shares have been forfeited:
- (a) ceases to be a Member in respect of the forfeited shares; and
 - (b) remains liable to pay to the Company all money that, at the date of forfeiture, was payable by them to the Company in respect of the shares until paid.
- 11.5 A written notice by a Director of the Company to a Member that a share in the Company has been forfeited is conclusive evidence against all persons claiming to be entitled to the share.

- 11.6 The provisions of these rules in relation to forfeiture apply to non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call made.

12 TRANSFERS

- 12.1 Subject to these rules a Member may transfer all or any of their shares:

- (a) by instrument in writing; and
- (b) in a form determined by the Directors signed by (or on behalf) of the transferor and the transferee.

- 12.2 In relation to any share transfer:

- (a) the transferor remains the holder of the shares until the transfer is registered and the transferee is entered in the register of Members;
- (b) all fees (if any) as the Directors determine and any stamp duty must be paid by the transferee; and
- (c) the registration of any transfer may be suspended as the Directors determine.

13 TRANSMISSION

- 13.1 The only persons recognised by the Company as having title to shares (including at a General Meeting) if an Event of Disqualification happens in relation to:

- (a) a joint holder (as joint tenants) of shares, are the remaining joint holders; and
- (b) a sole Member (or a joint holder as tenants in common) is the Legal Personal Representative of that Member.

- 13.2 Following an Event of Disqualification, the persons entitled to transmission of the shares must provide all information and sign all documentation required by the Directors and then elect:

- (a) to be registered themselves as holder; or
- (b) to have some other person nominated by them registered as holder.

- 13.3 All other provisions of these rules relating to share rights and share transfers apply in relation to transmissions under this rule.

14 INSPECTION OF RECORDS

- 14.1 Subject to the Act:

- (a) only Directors have a right to inspect any records of the Company; and
- (b) the Directors may determine the basis, if any, on which Members can inspect records of the Company.

15 GENERAL MEETINGS

- 15.1 Any Director may in their discretion call, cancel or postpone a General Meeting.

- 15.2 The Members may call a General Meeting as provided by the Act.
- 15.3 A notice of a General Meeting must specify:
- (a) the date, place and time of meeting;
 - (b) the general nature of the business to be transacted at the meeting;
 - (c) any matters required to be specified by the Act; and
 - (d) if the meeting is to be held at two or more places, details of the technology that will be used.
- 15.4 No business may be transacted at any General Meeting unless a quorum of Members is present at all times.
- 15.5 A quorum is:
- (a) where the Company has only one Member, that Member; and
 - (b) in all other circumstances, two Members present who between them may exercise at least one-half of the votes that may be cast on a resolution at a General Meeting.
- 15.6 For the purpose of determining whether a quorum is present, a person attending as a proxy, or an attorney or as a representative of a corporation that is a Member, is deemed to be a Member.
- 15.7 If a quorum is not present within one hour from the time appointed for the meeting:
- (a) where the meeting was called by Members the meeting will be dissolved; or
 - (b) where the meeting was called by the Directors:
 - (i) the meeting stands adjourned, as the Directors determine or, if no determination, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting:
 - (A) two Members constitute a quorum; or
 - (B) if only one Member is present the meeting is to be dissolved.

16 NOTICES OF GENERAL MEETING

- 16.1 Notice of every General Meeting is to be given in the manner authorised by this document to:
- (a) each Member individually who is entitled to vote at General Meetings of the Company;
 - (b) each Director;
 - (c) each person entitled to a share in consequence of an Event of Disqualification of a Member who, but for the Event of Disqualification, would be entitled to receive notice of the meeting; and
 - (d) any auditor of the Company.

16.2 No other person is entitled to receive notices of General Meetings.

17 CHAIRMAN

17.1 The sole Director or, any Director elected as chairman of their meetings, is to preside as chairman at every General Meeting.

17.2 Where a General Meeting is held and:

- (a) there is no chairman; or
- (b) the chairman is not present within 15 minutes after the start time of the meeting or is unwilling to act,

the Directors present must elect another Director to be chairman of the meeting.

17.3 If no Directors will act as chairman of the meeting then the Members present may elect a Member to be chairman of the meeting.

17.4 The chairman can, and must, if the Members by Ordinary Resolution direct, adjourn a meeting.

17.5 No notices are required in relation to an adjourned meeting unless the meeting is adjourned more than 20 Business Days, in which case, the notice provisions in this document must be followed.

18 VOTING AT GENERAL MEETINGS

18.1 Unless a Special Resolution is required by the Act, all decisions at General Meetings may be made by an Ordinary Resolution of Members present.

18.2 Resolutions are decided on a show of hands unless, a poll is demanded by:

- (a) the chairman;
- (b) at least three Members entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

18.3 A declaration by the chairman in the minute book is conclusive evidence of the decision without recording the number or proportion of votes recorded in favour of or against the resolution.

18.4 If a poll is duly demanded:

- (a) on the election of a chairman or on a question of adjournment – it is to be taken immediately; and
- (b) for any other question - it is to be taken as determined by the chairman in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.

18.5 The chairman only has a deliberative vote (if any) and no casting vote.

- 18.6 Subject to the rights attaching to the shares of Members:
- (a) each Member entitled to vote may vote in person or by proxy or attorney;
 - (b) on a show of hands every person present who is a Member (or a representative of a Member) has one vote; and
 - (c) on a poll every person present in person or by proxy or attorney has one vote for each share they hold.
- 18.7 In the case of joint holders only the vote of the Member whose name appears first on the register of Members is counted.
- 18.8 An objection may be raised to the qualification of a vote only at the meeting.
- 18.9 Any such objection is to be determined by the chairman in their discretion.
- 18.10 A vote permitted following an objection is valid for all purposes.

19 APPOINTMENT OF PROXIES

- 19.1 The appointment of proxy or attorney must be:
- (a) in writing;
 - (b) legally valid;
 - (c) specific whether the proxy or attorney:
 - (i) has discretion as to how votes must be cast; or
 - (ii) must vote in a specific manner;
 - (d) structured so as to confirm whether the person appointed has the authority to speak on behalf of the appointor to the extent permitted by law.
- 19.2 If the Member is entitled to cast two or more votes, they may appoint two proxies. Where a Member appoints two proxies or attorneys:
- (a) each proxy or attorney appointed may exercise half of the Member's voting rights unless the appointment specifies otherwise;
 - (b) on a show of hands, only one proxy or attorney can vote if the instrument appointing the proxy or attorney confirms who is authorised to vote; and
 - (c) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents (so long as the total does not exceed the aggregate voting rights of the appointing Member).
- 19.3 An instrument appointing a proxy or attorney is not effective unless original or certified copies of the instrument (and any authority under which it is signed) are provided to the Company at least one Business Day before the meeting.
- 19.4 Where an Event of Disqualification has revoked the appointment of a proxy or attorney, any vote given under it is deemed to be valid unless notice has been provided to the Company at least one Business Day before the meeting.

20 CIRCULAR RESOLUTIONS

- 20.1 The Directors may pass any Ordinary Resolution or Special Resolution of the Company in the form of a Circular Resolution.
- 20.2 The Members may pass any Ordinary Resolution or Special Resolution in the form of a Circular Resolution.

21 DIRECTORS

- 21.1 The names of the initial Directors are those persons listed as consenting to act as Directors in the application for registration of the Company.
- 21.2 The Company may have one or more Directors, appointed by Ordinary Resolution of the Members or Directors.
- 21.3 A Director continues to hold office until the Director:
- (a) is removed by Ordinary Resolution of the Members;
 - (b) resigns; or
 - (c) suffers an Event of Disqualification.
- 21.4 A Director is entitled to be paid such remuneration, accruing day to day, as determined by an Ordinary Resolution of the Company.
- 21.5 The Directors are to be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of:
- (a) the Directors;
 - (b) any committees of the Directors;
 - (c) General Meetings of the Company;
 - (d) otherwise in connection with the business of the Company.
- 21.6 Directors do not need to own shares in the Company to be a Director, unless an Ordinary Resolution of the Members so requires.
- 21.7 The Directors may appoint one or more persons as a Secretary of the Company.

22 POWERS AND DUTIES OF DIRECTORS

- 22.1 Subject to the Act and these rules:
- (a) the business of the Company is to be managed by the Directors;
 - (b) all costs the Directors incur in forming the Company must be reimbursed by the Company;
 - (c) the Directors may exercise all such powers of the Company not otherwise required to be exercised by the Company in General Meetings.

22.2 The Directors may appoint an attorney or attorneys of the Company on whatever terms they determine.

22.3 The Directors may determine how to sign all documents, including any form of negotiable instrument, on behalf of the Company.

23 PROCEEDINGS OF DIRECTORS

23.1 The Directors may meet as they determine appropriate.

23.2 Each Director must be given at least one Business Day notice of meetings of the Directors.

23.3 The Directors may meet either in person or by any technology consented to by all Directors subject, to the right of a Director to withdraw consent by notice to the Company at least one Business Day before a meeting.

23.4 Questions arising at a meeting of Directors are decided by a majority of votes of Directors present and entitled to vote and once made are deemed to be a decision of the Directors.

23.5 The chairman of a meeting has only a deliberative vote, and no casting vote.

23.6 Subject to:

(a) the Act; and

(b) a Director disclosing the nature and extent of any interest,

a Director may do any of the following in relation to the Company or any Related Bodies Corporate:

(c) enter into any arrangement with the Company;

(d) retain any profits arising out of any arrangement with the Company;

(e) vote at a meeting of the Directors and be counted in a quorum present at a meeting dealing with any arrangement between the Director and the Company;

(f) execute any document notwithstanding any interest which the Director has in the arrangement the subject of the instrument.

23.7 Unless there is a sole Director, the number of Directors for a quorum is two Directors.

23.8 The Directors must elect a chairman of meetings by Ordinary Resolution.

23.9 Where a meeting of Directors is held and:

(a) a chairman has not been elected; or

(b) the chairman is not present within thirty minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Directors present must elect a chairman of the meeting by Ordinary Resolution.

23.10 A Circular Resolution of Directors is as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted.

24 ALTERNATE DIRECTORS

24.1 A Director may appoint any person (regardless of whether they own a share in the Company) to be an alternate Director in their place and any appointment:

- (a) is for any period the appointor determines;
- (b) entitles the appointee to exercise all powers that the appointor may exercise and the exercise of the power is deemed to be the exercise of the power by the appointor;
- (c) can be terminated at any time by the appointor and terminates automatically if the appointor ceases to be a Director; and
- (d) is terminated by a notice to the Company.

25 COMMITTEES

25.1 The Directors may delegate any of their powers to committees consisting of as many Directors as determined.

25.2 A committee to which any powers have been delegated exercise the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.

26 SOLE DIRECTOR RESOLUTIONS

26.1 A sole director can:

- (a) pass a resolution; or
- (b) make a declaration,
by recording and signing the document.

27 MANAGING DIRECTOR

27.1 The Directors may appoint one or more Directors as a managing Director on whatever terms determined.

28 NOMINEE DIRECTORS

28.1 If at any time the Company is a wholly owned subsidiary of a corporation then the Directors appointed by that corporation to the board of the Company may take into account the interests of the appointor corporation when acting as Directors of the Company.

29 DELEGATION

29.1 The Directors may delegate any of their powers to one Director.

- 29.2 A Director to whom any powers have been so delegated must exercise those powers in accordance with any directions of the Directors and any power so exercised is deemed to have been exercised by the Directors.
- 29.3 Any act 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 valid, even if:
- (a) it was defective in the appointment of the person as a Director;
 - (b) the person was disqualified to be a Director;
 - (c) the person had vacated office; or
 - (d) the person was not entitled to vote,
- so long as the issue was unknown to the Directors when the act was done.

30 EXECUTION OF DOCUMENTS

- 30.1 The Company may have a Seal, and if it does:
- (a) the Directors must provide for the secure storage of the Seal;
 - (b) the Seal can only be used by the authority of the Directors (or of a committee of the Directors authorised by the Directors);
 - (c) the Seal must comply with the Act.
- 30.2 If the Company does not have a Seal, the Company may execute a document by having it signed by:
- (a) two Directors;
 - (b) a Director and a Secretary; or
 - (c) if the Company has a sole Director, that Director.
- 30.3 The Company may execute documents in any other manner permitted by law.

31 DIVIDENDS AND RESERVES

- 31.1 Subject to the Act, the Directors may:
- (a) pay any interim and final dividends that, in their judgment, the financial position of the Company justifies;
 - (b) rescind a decision to pay a dividend if they determine, before the payment date, that the Company's financial position no longer justifies the payment; and
 - (c) pay any dividend required to be paid under the terms of issue of a share.
- 31.2 The Directors may:
- (a) set aside out of profits, amounts as reserves;
 - (b) apply any amounts previously reserved; or
 - (c) carry forward any profits specifically setting them aside as a reserve.

- 31.3 Setting aside an amount as a reserve does not require the Directors to keep the amount separate from the Company's other assets or prevent the amount being used in the Company's business or being invested as the Directors decide.
- 31.4 Subject to the rights of Members owning shares with special rights as to dividends (if any), all dividends are to be paid proportionately according to the amounts paid, or credited as paid, on the relevant shares.
- 31.5 An amount paid or credited as paid on a share in advance of a call is not to be taken for the purposes of this rule.
- 31.6 The Directors may deduct from any dividend to be paid to any Member any sums of money payable by the Member to the Company on account of unpaid calls.
- 31.7 The Directors may fix a record date for a dividend, with or without suspending the registration of transfers from that date.
- 31.8 A dividend must be paid to the person who is registered, as a Member:
- (a) where the Directors have fixed a record date for the dividend, on that date; or
 - (b) where the Directors have not fixed a record date for that dividend, on the date fixed for payment of the dividend,
- and a transfer of a share that is not registered, on or before that date is not effective, as against the Company, to pass any right to the dividend.
- 31.9 Interest is not payable by the Company in respect of any declared but unpaid dividend.
- 31.10 The Directors may pay dividends by any method the Directors determine.
- 31.11 Different methods of payment may apply to different Members or groups of Members.
- 31.12 The Directors may distribute specific assets (including paid-up shares or other securities of the Company or of another Related Body Corporate) to Members as direct payment of a dividend however they determine.
- 31.13 The Directors may permit the Members or any class of Members to:
- (a) reinvest cash dividends by subscribing for shares or other securities in the Company or Related Bodies Corporate; and
 - (b) forgo the right to receive cash dividends and receive instead some other form of distribution of entitlement (including securities),
- as they determine.
- 31.14 Unclaimed dividends may be invested by the Directors as they determine for the benefit of the Company until claimed or until required to be dealt with under the law.

32 CAPITALISATION OF PROFITS

- 32.1 The Directors may resolve to capitalise any amount standing to the credit of any reserve or otherwise available for distribution to Members. Any amount may be applied in the proportions Members would have been entitled to a dividend, by either or both paying up:
- (a) any amounts unpaid on shares held by Members; or
 - (b) in full unissued shares or debentures, to be issued to Members fully paid.
- 32.2 The Directors may do all things necessary to give effect to a resolution to capitalise profits, including:
- (a) adjusting the rights of the Members among themselves;
 - (b) issuing fractional certificates or making cash payments where shares or debentures become issuable in fractions; and
 - (c) authorising any person to make (on behalf of all the Members entitled to any further shares or debentures upon the capitalisation) an agreement with the Company providing for:
 - (i) the issue, credited as fully paid up, of further shares or debentures; or
 - (ii) the payment 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 sum resolved to be capitalised.

33 WINDING UP

- 33.1 If the Company is wound up, the liquidator may, following a Special Resolution of the Members:
- (a) divide among the Members in kind the whole, or any part, of the property of the Company;
 - (b) determine the value of any property to be so divided;
 - (c) determine how the division is to be carried out as between the Members or different classes of Members; and
 - (d) vest the whole, or any part of the property of the Company, in trustees upon such trusts for the benefit of the contributories as the liquidator determines, provided no Member is compelled to accept any shares or other securities in respect of which there is any outstanding liability.

34 INDEMNITY AND INSURANCE

- 34.1 Subject to the Act, the Company indemnifies each Officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of an Officer of the Company, other than a Liability:
- (a) owed to the Company or Related Bodies Corporate of the Company;
 - (b) for a pecuniary penalty order under the Act or a compensation order under the Act; or

- (c) owed to a person other than the Company that arose out of conduct that was not in good faith.

34.2 The Company indemnifies each Officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an Officer of the Company other than for legal costs incurred concerning proceedings:

- (a) in which the Officer is found to have a Liability for which they could not be indemnified under rule 34.1;
- (b) that are criminal in nature and in which the Officer is found guilty; or
- (c) brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (however this rule does not apply to deny indemnity for costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order are commenced).

34.3 Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

34.4 The Company shall not pay, nor agree to pay, a premium for a contract insuring an Officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or section 183 of the Act.

35 GOVERNING JURISDICTION

35.1 This document is governed by and is to be construed in accordance with the laws of Australian Capital Territory.

36 INTERPRETATION

36.1 In this document:

- (a) singular words include the plural, and vice versa;
- (b) each word suggesting a gender includes all other genders, including neutral gender;
- (c) a reference to a person includes natural persons, firms, Companies and any form of a corporation, trustee, trust, partnership, associations, unincorporated body, government and local authority or agency, or any other entity whether or not it comprises a separate legal entity;
- (d) a reference to a rule, clause, schedule or annexure are references to this document and references to this document include every clause, the matters set out in the Overview and any schedules or annexures;

- (e) if any person signs this document on behalf of a party pursuant to a power of attorney, they confirm that there is nothing that impacts on their authority to do so;
- (f) a reference to a document or agreement (including a reference to this document) means that entire document or agreement (including all schedules or annexures) as amended, supplemented, novated, varied or replaced;
- (g) a reference to a person includes that person's estate successors, Legal Personal Representatives, executors, administrators, permitted substitutes and permitted assigns;
- (h) where any word or phrase is defined in this document, its other grammatical forms have a corresponding meaning;
- (i) a reference to this document includes the agreement recorded by this document;
- (j) headings and any table of contents are not to be taken into account in the construction of this document;
- (k) a reference to legislation or to a modified, rewritten, consolidated provision or section of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (l) the applicable time zone for any action required under this document is the one applying in the situs of the person responsible for performing the action;
- (m) a reference to writing includes printing, typing, copying, facsimile, and any other method of representing words, symbols, figures or drawings in a visible and tangible manner or electronically;
- (n) if any part of this document is illegal or unenforceable it can be severed, with the remaining clauses (or parts of the clause) remaining in force;
- (o) if any part of this document is illegal or unenforceable in any jurisdiction, it can be severed in the relevant jurisdiction, with the remaining clauses (or parts of the clause) remaining in force;
- (p) unless this document provides for a notice or communication to be given orally, any notice or other communication must be in writing and signed by the person giving the notice and be addressed to the address of the person to whom it is to be given;
- (q) a reference to 'month' means a calendar month;
- (r) if any provision of this document is ambiguous, it is to be interpreted broadly to widen and not restrict the provisions;
- (s) where an expression is defined anywhere in this document, it has the same meaning throughout; and
- (t) a reference to 'dollars' or '\$' is to an amount in Australian currency.

Notices

36.2 A notice or other communication is deemed to be received:

- (a) in the case of a posted letter, on the second Business Day after posting where sent by Australia Post's 'express post' service and if not, then on the seventh Business Day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the next Business Day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent; and
- (e) in the case of transmission by email, on the day of transmission if there is confirmation that the transmission was completed before 5.00pm on a Business Day, and alternatively, on the next Business Day. Email service is effective only if there is confirmation that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

SCHEDULE 1 - DIVISION 7A AGREEMENT

1. Definitions

1.1 In this schedule all terms defined in the Constitution have the same meanings and:

Term	Definition
Borrower	Means a Member of the Company.
Default Event	Means: <ul style="list-style-type: none">(a) the Borrower failing to make a payment required under this document to the Lender by the required time;(b) the Borrower failing to provide adequate security to the Lender for the Outstanding Amount, if requested by the Lender under this document;(c) the Borrower failing to comply with any of its obligations under this document;(d) the death of the Borrower;(e) the committing of an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act (excluding section 40(b) of the Bankruptcy Act) by the Borrower;(f) a sequestration order being made against the Borrower under section 43 of the Bankruptcy Act;(g) the Borrower presenting a declaration of their intention to present a debtor's petition under section 54A of the Bankruptcy Act;(h) the Borrower presenting a petition against themselves under section 55 of the Bankruptcy Act;(i) the Borrower entering into a part X personal insolvency agreement under the Bankruptcy Act;(j) the Borrower entering into a part IX debt agreement under the Bankruptcy Act;(k) if the Borrower is a director of a company, the company being wound up by order of a court on the grounds of insolvency;(l) the appointment of an administrator of the Borrower under section 436A or section 436C of the Corporations Act;(m) an order for the winding up of the Borrower being made under sections 233, 459A, 459B or 461 of the Corporations Act;(n) a resolution being passed for the winding up of the Borrower under section 491 of the Corporations Act;

Term	Definition
	<p>(o) the Borrower being deregistered under sections 601AB or 601AC of the Corporations Act; or</p> <p>(p) judgment being entered against the Borrower.</p>
Interest Rate	Has the meaning given to the term 'benchmark interest rate' in section 109N(2) of the Tax Act (1936).
Lender	Means the Company.
Lodgement Day	Has the meaning given to that term in section 109D(6) of the Tax Act (1936).
Outstanding Amount	Means, on any day, the total of all money owing, payable or contingently payable to the Lender under this document.
PPSA	Means the <i>Personal Property Securities Act 2009</i> (Cth).
Principal Sum for each Yearly Period	Means the total of all amounts lent by the Lender to the Borrower in each Yearly Period under this document less any of those amounts which are fully repaid by the Lodgement Day.
Secured Loan	Means a loan where: <p>(a) 100% of the loan is secured by registered mortgage over real property; and</p> <p>(b) the market value of the mortgaged property (after deducting any mortgages on the property which have a priority) is at least 110% of the amount lent at the time the loan is made.</p>
Security Interest	Has the meaning given to that term under the PPSA.
Tax Act (1936)	Means <i>Income Tax Assessment Act 1936</i> (Cth).
Term	Means the period commencing on the date the first loan is made and which ends on the final Termination Date, subject to any adjustment pursuant to clause 3.5.
Termination Date	Means: <p>(a) for an Unsecured Loan – the date that is seven years from the date the loan was made, or the earlier date upon which the Outstanding Amount becomes payable under this document; and</p> <p>(b) for a Secured Loan – the date that is 25 years from the date the loan was made, or the earlier date upon which the Outstanding Amount becomes payable under this document.</p>
Unsecured Loan	Means a loan that is not a Secured Loan.
Yearly Period	Means a period starting on 1 July in one year and ending on 30 June of the next year.

1.2 In this schedule the interpretation provisions set out in the Constitution apply.

2. Loans

- 2.1 The Lender may lend money to the Borrower at the Borrower's request.
- 2.2 This document sets out the terms of all loans made by the Lender to the Borrower unless otherwise agreed by the parties.
- 2.3 The loan dates and amounts recorded in the Lender's general ledger will be conclusive proof of the dates and amounts that the Lender has lent to the Borrower in the absence of a material error.
- 2.4 Each loan to a Borrower is a separate loan and is not to be amalgamated unless the Borrower and Lender agree in writing.

3. Repayment

- 3.1 The Principal Sum for each Yearly Period must be repaid by the Borrower to the Lender on the relevant Termination Date.
- 3.2 The Borrower may repay the Principal Sum for each Yearly Period before the relevant Termination Date for any reason, including to meet the minimum repayment requirements under the Tax Act (1936).
- 3.3 If a Borrower becomes entitled to the payment of any dividend by the Company, then unless the Borrower and Lender otherwise agree in writing, the dividend is to be set off against the amount of any loans, together with any accrued interest outstanding at the date of payment of the dividend.
- 3.4 If a Borrower requests, the Company may convert an Unsecured Loan into a Secured Loan or allow a Secured Loan to be refinanced into an Unsecured Loan.
- 3.5 If the Company agrees to the request, the term of the Secured Loan is as follows:
 - (a) on the conversion of an existing Unsecured Loan into a Secured Loan, 25 years less the period of the term already expired in relation to the existing Unsecured Loan; or
 - (b) on the conversion of an existing Secured Loan into an Unsecured Loan:
 - (i) if the period of the existing Secured Loan is more than 18 years, the maximum Term of the new Unsecured Loan will be the difference between 25 years and the actual period; or
 - (ii) if the actual period is less than 18 years, then the maximum term of the new Unsecured Loan must not exceed 7 years.

4. Interest

- 4.1 Interest on an outstanding Principal Sum for each Yearly Period will accrue from day to day during each Yearly Period on the basis of the actual number of days elapsed in that Yearly Period (while the relevant amount remained outstanding) at the Interest Rate.

4.2 Subject to clause 4.3, interest on the Principal Sum for each Yearly Period will be payable by the last day of the relevant Yearly Period.

4.3 No interest will be payable on the Principal Sum for the first Yearly Period in which a Loan has been made.

5. Default Event

5.1 If any Default Event occurs:

- (a) the Outstanding Amount is immediately due and payable; and
- (b) the Lender may (without giving any demand or notice to the Borrower):
 - (i) enforce this document;
 - (ii) enforce the Security Interest created under clause 5.2;
 - (iii) if the loan is a Secured Loan, enforce the interests under the registered mortgage; or
 - (iv) exercise or enforce all or any of the Lender's rights, powers or remedies:
 - (A) conferred by law;
 - (B) under or arising in connection with this document or in any other way,

or any combination of the above.

5.2 If the Outstanding Amount remains outstanding then the Borrower must give the Lender any reasonable Security Interest requested by the Lender as security for payment of the Outstanding Amount and such Security Interest will be enforceable against the Borrower until the entire Outstanding Amount is paid.

6. Other terms

6.1 Any payments required to be made by the Borrower under this document must be made in the manner specified by the Lender.

6.2 The Borrower must pay all costs in relation to the preparation and signing of this document.

6.3 The Borrower must pay any tax or stamp duty payable in relation to this document or the transactions contemplated by it.

6.4 If a party to this document consists of more than one person, that party's obligations under this document are joint and several obligations of those persons.

6.5 This document may only be amended by written agreement between all parties.

7. Governing jurisdiction

7.1 This document is governed by and is to be construed in accordance with the laws of Australian Capital Territory.

8. Interpretation

8.1 In addition to the interpretation provision set out in the constitution, the following provisions apply:

- (a) it may only be amended in writing with the consent of all parties;
- (b) a party may assign their rights under this document with the written consent of each other party;
- (c) it embodies the entire agreement between the parties and to the extent permitted by law, no previous statement, representation or promise has any effect unless expressly provided in this document;
- (d) every party to this document confirms they intend to be bound when they sign it;
- (e) in relation to any party to this document, where there is more than one person, and a provision in the document where more than one party is referred to, then:
 - (i) every obligation on those persons is joint and several; and
 - (ii) any rights that those persons have are several;
- (f) there is no merger of the parties' rights and obligations on completion of any transaction contemplated by this document, such that if they have not been fulfilled and satisfied, they will remain in full force and effect;
- (g) a right or remedy under this document may be exercised by a party notwithstanding there is a conflict of interest or the party has a personal interest in exercising the right of remedy;
- (h) the rights and remedies under this document are in addition to any other right or remedy available at law;
- (i) notwithstanding any other provision of this document, any obligation of a party under this document is suspended to the extent it is impossible to act due to any cause beyond its control (including war, riot, natural disaster, labour dispute, or law taking effect) provided that party gives the other parties notice that it is unable to act within 5 Business Days of the cause; and
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.

Counterparts

8.2 This document may be signed in any number of counterparts and all counterparts together make one document.

Legal advice

8.3 Each party acknowledges that it has read and understood this document and has had the opportunity to obtain independent financial and legal advice about its terms.

No waiver

8.4 A party may waive all or part of their rights under this document in writing.

8.5 A party's failure to require performance of a provision of this document does not alter that party's rights to require subsequent performance of that provision.

8.6 Any party's waiver (whether full or partial) of the exercise of a right under this document does not alter that party's entitlement for further exercise of that right.

Method of payment

8.7 Any payments required under this document must be paid:

(a) in cash;

(b) by bank cheque; or

(c) by depositing cleared funds into the recipient's bank account.

Time of the essence

8.8 The parties acknowledge that time is of the essence.

