

## Constitution

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## Constitution

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### Details Schedule

Item	Relevant Term	Detail
1.	Company	Half A Cow Online Pty Ltd ACN 658 813 506
2.	Permitted Transfers (clause 23)	Transfers between Founding Shareholders will not be Permitted Transfers in this constitution.
3.	Restricted Shares (clause 23.1)	Shares held by Founding Shareholders will not be Restricted Shares in this constitution.
4.	Tag along rights (Schedule 1)	Tag along rights will apply in this constitution. If tag along rights will apply in this constitution the Tag Threshold will be 51% of the total issued shares in the Company.
5.	Drag along rights (Schedule 2)	Drag along rights will apply in this constitution. If drag along rights will apply in this constitution the Drag Threshold will be 51% of the total issued shares in the Company.
6.	Nominee director rights (Schedule 3)	Nominee Director rights will not apply in this constitution.
7.	Exit provisions (Schedule 4)	Exit provisions will apply in this constitution.

## Part 1 – Preliminary

### 1. Name

The Company is the entity in Item 1 of the Details Schedule.

### 2. Nature of Company

The Company is a proprietary company limited by shares.

### 3. Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company.

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## Part 2 – Shares

### 4. Issue of shares

Without limiting the Company's powers under the Corporations Act, the Company (under the control of the Directors) may:

4.1 issue shares in the Company; and

4.2 grant options over unissued shares in the Company;

on any terms, with any rights or restrictions attached to the shares, at any time, and for any consideration the Directors decide.

### 5. Pre-emptive rights – new issues

5.1 Subject to clause 5.4, before issuing shares of a particular class, the Directors must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that the shareholder already holds.

5.2 To make the offer, the Directors must give the shareholder a statement setting out the terms of the offer, including:

(a) the number of shares offered; and

(b) the period for which it will remain open.

5.3 The Directors may issue any shares not taken up under the offer under clause 5.1 as they decide, provided the terms of issue are no more favourable than those offered under clause 5.2.

5.4 This clause 5 does not apply to any Excluded Issue.

### 6. Share Plan

6.1 At any time the Directors may establish a formal written share plan to issue shares in the Company or grant options over unissued shares in the Company to eligible service providers (whether directors, employees or contractors) that result in the issue of that number of shares of an amount up to 15% of the fully diluted share capital of the Company as at the date of the written share plan (**Share Plan**).

6.2 The Share Plan will authorise the Directors to issue shares under the Share Plan to eligible service providers as determined by the Directors in their discretion.

6.3 Any issue of shares under the Share Plan will be an Excluded Issue.

## **7. Preference shares**

- 7.1 The Company may issue preference shares on terms approved by special resolution of the Company as to:
- (a) repayment of capital;
  - (b) participation in surplus assets and profits;
  - (c) cumulative and non cumulative dividends;
  - (d) voting;
  - (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.
- 7.2 The Company may issue new preference shares that rank equally with existing preference shares. A new issue is taken not to vary the rights attached to the existing preference shares.
- 7.3 The Company may only redeem redeemable preference shares according to their terms of issue.

## **8. Variation of classes and class rights**

- 8.1 Subject to the Corporations Act, the Company may:
- (a) vary or cancel rights attached to shares in a class of shares;
  - (b) convert shares from one class to another;
- by special resolution of the Company and:
- (c) by special resolution passed at a meeting of the holders of shares in that class; or
  - (d) by the written consent of shareholders with at least 75% of the votes in that class.
- 8.2 Part 5 (with the necessary changes) applies to meetings of holders of a class of shares.
- 8.3 The Company may issue new shares that rank equally with existing shares. A new issue is taken not to vary the rights attached to the existing shares.

## **9. Alteration of share capital**

The Company in general meeting may convert its shares into a larger or smaller number of shares.

## **10. Reduction of capital and buy backs**

Subject to the Corporations Act, the Company may:

- 10.1 reduce its share capital;
- 10.2 buy back shares in itself.

## **11. Brokerage**

The Company may pay brokerage or commission if a person takes up shares in the Company.

## **12. Joint holders**

- 12.1 Two or more persons may hold a share only as joint tenants.
- 12.2 The Company need not register more than three persons as joint holders of a share.

## **13. Trust not recognised**

Except as required by law or this constitution, the Company need not recognise:

- 13.1 that a person holds a share on trust; or
- 13.2 any interest in a share except the registered holder's absolute ownership of the whole share.



#### **14. Share certificates**

- 14.1 When the Company registers shares of any class to a shareholder, the Company must issue to the shareholder, without charge, a certificate for those shares.
- 14.2 The Company must issue to each shareholder a free certificate for all the shares of each class registered in the shareholder's name.
- 14.3 The Company must issue only one certificate for shares registered in more than one name. The Company may deliver that certificate to any one of the registered holders.
- 14.4 The Company must issue a replacement certificate (marked as such) if:
  - (a) the Company receives and cancels the old certificate; or
  - (b) the Company is satisfied that the old certificate is lost or destroyed, and the shareholder indemnifies the Company as the Directors require.

#### **15. CSF Offers**

- 15.1 The Company may, from time to time, make a CSF Offer.
- 15.2 Despite anything contained in this constitution to the contrary, if the Company is making a CSF Offer or has one or more CSF Shareholders the following provisions apply:
  - (a) if the Corporations Act prohibits an act being done in relation to a CSF Offer, or as a result of the Company having one or more CSF Shareholders, the act must not be done;
  - (b) nothing contained in this constitution prevents an act being done in relation to a CSF Offer, or as a result of the Company having one or more CSF Shareholders;
  - (c) if the Act requires an act to be done in relation to a CSF Offer, or as a result of the Company having one or more CSF Shareholders, authority is given for that act to be done or not to be done (as the case may be);
  - (d) if the Act requires this constitution to contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, and it does not contain such a provision, this constitution is deemed to contain that provision;
  - (e) if the Act requires this constitution to not contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, and it does contain such a provision, this Constitution is deemed not to contain that provision; and
  - (f) if any provision of this constitution is or becomes inconsistent with the Corporations Act in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

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### **Part 3 – Calls, Liens and Forfeiture**

#### **16. Calls**

- 16.1 Subject to the terms of issue, the Directors may make calls on the holder of a share for any unpaid portion of the issue price of that share at any time.
- 16.2 The Directors may make a call payable by instalments.
- 16.3 The Directors must give to the shareholder at least 10 Business Days' notice of a call, specifying the amount payable, and the time and place of payment.
- 16.4 A call is made when the Directors resolve to make the call.
- 16.5 The Directors may revoke or postpone a call or extend the time for payment.

- 16.6 A call is still valid if either or both:
- (a) a shareholder does not receive notice of the call;
  - (b) the Company accidentally does not give notice of the call to a shareholder.
- 16.7 A shareholder must pay to the Company:
- (a) the amount called, by the time and at the place specified;
  - (b) if the amount called is not paid by that time, interest at the rate fixed in this Part on an unpaid call (or instalment) from the date the call (or instalment) becomes presently payable until and including the date of payment; and
  - (c) costs incurred by the Company because of the non payment or late payment.
- 16.8 Joint holders of a share and their respective personal representatives are all jointly and severally liable to pay all calls on the share.
- 16.9 If, by the terms of issue, an amount is payable on issue or at a fixed date, the Company is taken to have properly called that amount and given proper notice of it.
- 16.10 The Directors may waive all or any part of an amount payable under this clause 16 or the terms of issue of a share.
- 16.11 The Directors may recover an amount presently payable under this clause 16 from a shareholder in all or any of the following ways:
- (a) by suing the shareholder for debt;
  - (b) by enforcing the lien on the share;
  - (c) by declaring forfeit the share.
- 16.12 A debt is sufficiently proved by evidence that:
- (a) the shareholder is registered as a holder or a joint holder of the share; and
  - (b) the resolution for the call is recorded in the minute book.
- 16.13 The Directors may authorise the Company:
- (a) to accept from a shareholder an amount paid before call;
  - (b) to pay interest on the amount paid before call, at any rate the Directors decide, from the date of payment until and including the date the call becomes presently payable;
  - (c) to repay the amount to the shareholder.
- 16.14 An amount paid before call is ignored in determining a Dividend or surplus in a winding up.

## **17. Indemnity from taxation**

- 17.1 If the Company is required by law to pay an amount (including a tax) in respect of a shareholder or a share held by that shareholder or a Dividend in respect of a share held by that shareholder:
- (a) the shareholder or the shareholder's personal representative must:
    - (i) indemnify the Company against that liability;
    - (ii) on demand, reimburse the Company for any payment by the Company, and pay to the Company interest on it at the rate fixed under this Part from the date of payment by the Company until and including the date the shareholder reimburses the Company and pays any costs incurred by the Company because of the payment;
  - (b) the Company may refuse to register a transfer of any shares by or to the shareholder or the shareholder's personal representative until payment of all amounts presently payable under this clause 17.
- 17.2 The Directors may waive any of the Company's rights under this clause 17.

17.3 The Directors may recover an amount presently payable under this clause 17 from a shareholder in both or either of the following ways:

- (a) by suing the shareholder for debt;
- (b) by enforcing the lien on the share.

## 18. **Forfeiture**

18.1 The Directors may resolve that a shareholder's share is forfeited if:

- (a) the shareholder does not pay a call or instalment on the share when presently payable; and
- (b) the Company gives the shareholder notice:
  - (i) requiring payment of that call or instalment, any interest on it and any costs incurred by the Company because of the non payment;
  - (ii) stating that the share will be forfeited if the shareholder does not pay to the Company, at the place named, the total amount within 10 Business Days (or any longer period stated) after the notice is given; and
- (c) the shareholder does not pay the total amount within that period.

18.2 When a share is forfeited, the Company must:

- (a) notify the former holder that the share is forfeited; and
- (b) record the forfeiture and date of forfeiture in the register of shareholders.

A failure to do this does not invalidate the forfeiture.

18.3 The former holder of a forfeited share must pay to the Company:

- (a) all calls, instalments, interest and costs in respect of the share at the time of forfeiture; and
- (b) interest at the rate fixed in this Part on those amounts from the date of forfeiture until and including the date of payment.

18.4 The forfeiture of a share extinguishes:

- (a) the former shareholder's interest in the share; and
- (b) all claims against the Company in respect of the share, including all Dividends presently payable by the Company on the share.

18.5 The Company may sell or otherwise dispose of a forfeited share on any terms and in any way the Directors decide.

18.6 A certificate by a director or secretary of the Company that the share was forfeited on a specified date is sufficient evidence of the matter, unless it is proved to be incorrect.

18.7 The Directors may:

- (a) waive any of the Company's rights under this clause 18;
- (b) before sale or re issue of a forfeited share, annul the forfeiture on any terms the Directors decide.

## 19. **Lien**

19.1 The Company has a first ranking lien on:

- (a) each share registered to a shareholder;
- (b) Dividends on the share;
- (c) proceeds of sale of the share;

for:

- (d) an unpaid call or instalment that is due but unpaid on the share;

- (e) any amounts the Company is required by law to pay (and has paid) in respect of the shares of that shareholder or deceased former shareholder;
  - (f) any interest and costs presently payable to the Company under this Part.
- 19.2 The Company may sell a share to enforce a lien if:
- (a) an amount secured by the lien is presently payable;
  - (b) the Company gives the shareholder notice:
    - (i) requiring payment of that amount, any interest on it and any costs incurred by the Company because of the non payment;
    - (ii) stating that the share will be sold if the shareholder does not pay to the Company, at the place named, the total amount within 10 Business Days (or any longer period stated) after service of the notice; and
  - (c) the shareholder does not pay the total amount within that period.
- 19.3 The Directors may waive any of the Company's rights under this clause 19.
- 19.4 Registration by the Company of a transfer of a share releases any lien on that share, insofar as the lien relates to money owing by the transferor or previous transferor, unless the Company gives the transferee notice of its claim.

## 20. **Sale**

- 20.1 The Directors may authorise a person to sign a transfer of a forfeited share or a share sold to enforce a lien.
- 20.2 The Company must apply the sale price from:
- (a) the sale of a forfeited share; or
  - (b) the sale of a share sold to enforce a lien,
- in the following order:
- (c) to the costs of the sale;
  - (d) to the amount presently payable by the former holder to the Company;
  - (e) to the former holder or the former holder's personal representative, on receipt of the certificate for the share.
- 20.3 The Company must register the purchaser of the share as the holder of the share.
- 20.4 The purchaser need not enquire whether the Company:
- (a) properly exercised its powers in respect of the share;
  - (b) properly applied the sale price for the share.
- These matters do not affect the title of the purchaser.
- 20.5 Unless expressly agreed, the purchaser is not liable for calls and other amounts presently payable in respect of the share before the sale.

## 21. **Interest**

- 21.1 A shareholder must pay interest under this Part to the Company:
- (a) at a rate the Directors decide;
  - (b) if the Directors do not decide a rate, at 10% per annum.
- 21.2 Interest payable to the Company accrues daily.
- 21.3 The Company may capitalise interest monthly or at any other intervals the Directors decide.

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## Part 4 – Transfer of Shares

### 22. General restriction on Security Interests

A shareholder must not grant any Security Interest over shares in the Company without first obtaining approval by Required Resolution of the Directors.

### 23. Permitted Transfers

A shareholder must not transfer any shares in the Company except:

- 23.1 in accordance with clause 24, except for Restricted Shares, which may not be transferred in accordance with clause 24;
- 23.2 in accordance with Schedule 1 (if applicable) or Schedule 2 (if applicable);
- 23.3 with the written consent of all other shareholders;
- 23.4 if the shareholder is a body corporate, to an Affiliate;
- 23.5 if the shareholder is an individual:
  - (a) to a Relative of the shareholder;
  - (b) to the trustee of a trust principally for the benefit of the shareholder or a Relative of the shareholder;
  - (c) to a body corporate, all shares in which are beneficially owned by any of the above persons;
  - (d) under a will or the rules of intestacy;
  - (e) to a person entitled to the shares because of a Transmission Event; or
  - (f) from a trust (including a superannuation fund) principally for the benefit of the shareholder and that person's Relatives to the trust's beneficiaries (or members in the case of a superannuation fund);
- 23.6 if the shareholder is a trustee of a trust (including a superannuation fund), to a new or replacement trustee of the trust;
- 23.7 if the shareholder is a CSF Shareholder whose shareholding is comprised solely of shares issued pursuant to a CSF Offer; or
- 23.8 if the shareholder is a Founding Shareholder, to another Founding Shareholder, provided Item 2 of the Details Schedule says transfers between Founding Shareholders will be Permitted Transfers.

### 24. Pre-emptive rights – transfers

- 24.1 If a shareholder (**Seller**) wishes to transfer any shares in the Company (other than a Permitted Transfer), the Seller must give to the Directors notice (**Transfer Notice**) to that effect.
- 24.2 The Transfer Notice constitutes the Directors as the agent of the Seller to sell the shares to other shareholders of the Company (other than any CSF Shareholders whose shareholdings are comprised solely of shares issued pursuant to a CSF Offer) at fair value.
- 24.3 The fair value of a share is the price agreed by the Seller and the Directors. If they do not agree, the fair value is the price set by the Company's auditor (or if there is no auditor, an accountant appointed by the Directors) as the fair selling value of the shares as between a willing seller and a willing buyer. The auditor or accountant is an expert, not an arbitrator. The decision of the auditor or accountant binds the Seller and the Directors. The Seller and the Company must each pay one half of the costs of valuation.
- 24.4 The Seller cannot revoke a transfer notice without the consent of the Directors. The Directors may consent on any terms.

- 24.5 After the fair value is agreed or set, the Directors must give notice to the other holders of shares of that class (other than the CSF Shareholders whose shareholdings are comprised solely of shares issued pursuant to a CSF Offer):
- (a) stating the number and price of the shares for sale; and
  - (b) inviting each of those other holders to notify the Directors, within 15 Business Days after the Directors' notice is given, whether they wish to buy any of the shares, and if so, the maximum number.
- 24.6 After that period of 15 Business Days ends, the Directors must allocate the shares to the shareholders who wish to buy them. If two or more shareholders offer to buy the shares and there are not enough shares to fill their offers, the Directors must allocate the shares to those shareholders (each a **Buyer**) in proportion to the number of shares in that class already held by each of them. However, the Directors must not allocate to a Buyer more than the maximum number of shares the Buyer specified.
- 24.7 If any shares are not allocated under this procedure, or if there are no other holders of shares of that class, the Directors must:
- (a) give notice to the other shareholders holding any other class of shares (other than CSF Shareholders whose shareholdings are comprised solely of shares issued pursuant to a CSF Offer); and
  - (b) allocate the remaining shares among those shareholders,
- following the same procedure (with the necessary changes).
- 24.8 If:
- (a) the Directors allocate a share to a Buyer; and
  - (b) the Buyer pays the price,
- the Seller must transfer the share to the Buyer. If the Seller does not do so, the Seller is deemed to appoint the chairman of Directors, or any other director of the Company nominated by the Directors for that purpose, as the Seller's attorney:
- (c) to execute, complete and deliver the transfer in the Seller's name;
  - (d) to receive the price in the Seller's name; and
  - (e) to give an effective receipt for the price in the Seller's name.
- 24.9 After:
- (a) the transfer is executed and delivered by or for the Seller; and
  - (b) the Buyer pays the stamp duty (if any) on the transfer,
- the Company must register the Buyer as the holder of the share.
- 24.10 If the Directors (as agent of the Seller) do not sell all the shares after the allocations under clauses 24.6 and 24.7 have been exhausted:
- (a) the Company must promptly notify the Seller of the unallocated shares; and
  - (b) the Seller may transfer any unallocated shares to any person at the fair value or more, provided the transfer completes within 6 months of the date the Transfer Notice is given.

## 25. Instrument of transfer

An instrument of transfer of shares must be:

- 25.1 in writing;
- 25.2 in a common form or as the Directors accept;
- 25.3 executed by or for both the transferor and the transferee;
- 25.4 stamped;

25.5 delivered to the Company, at any place the Directors specify, together with the certificate for the shares and any other evidence the Directors require to prove:

- (a) the title of the transferor;
- (b) the transferor's right to transfer the shares; and
- (c) the proper execution of the instrument of transfer.

26. **Effect of transfer**

A transferor of shares remains the holder of the shares until the transfer is registered and the name of the transferee is entered in the register of shareholders as the owner of the shares.

27. **No charge**

The Company must not charge a fee to register a transfer.

28. **Refusal to register transfer**

28.1 The Directors may refuse to register a transfer of shares if:

- (a) clause 23 or clause 25 is not complied with;
- (b) clause 17.1(b) or clause 34.2 applies;
- (c) the shares are not fully paid; or
- (d) the Company has a lien on the shares.

28.2 The Company must give notice of any refusal to the transferee. The notice must set out the reason for the refusal. Failure to do so does not invalidate the decision of the Directors.

29. **Suspension of registration**

The Directors may suspend registration of transfers of shares in the Company at the times and for the periods they decide. The periods of suspension must not exceed 30 days in any calendar year.

30. **Company retains instrument of transfer**

30.1 The Company may keep an instrument of transfer after registration.

30.2 If demand is made within 12 months after the Company gives notice of a refusal to register and there is no allegation of fraud, the Company must return the instrument of transfer to the depositor.

31. **Death of shareholder**

31.1 If a shareholder (other than a joint shareholder) dies, the Company must recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's shares.

31.2 If a shareholder who owns shares jointly dies, the Company must recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.

31.3 Whether the deceased shareholder owned the shares solely or jointly, the estate of the deceased shareholder is not released from any liability in respect of the shares.

32. **Transmission**

32.1 If a person is entitled to shares because of a Transmission Event and gives the Directors the information they reasonably require to establish the person's entitlement:

- (a) the person may:
  - (i) by giving notice to the Company, elect to be registered as the holder of the shares; or

- (ii) by giving a completed instrument of transfer to the Company, transfer the shares to another person; and
  - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder or deceased shareholder.
- 32.2 On receiving a notice under sub-clause 32.1(a)(i), the Company must register the person as the holder of the shares.
- 32.3 A transfer under sub-clause 32.1(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

### 33. **Non-competition**

- 33.1 This clause 33 has effect as if it were separate and independent clauses, each one being severable from the others and consisting of the covenant set out in clause 33.3 combined with each separate period referred to in clause 33.4, and each combination combined with each separate area referred to in clause 33.5.
- 33.2 If any of these separate clauses are void, invalid or unenforceable for any reason, it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability and will not affect the validity or enforceability of any other separate clause or other combinations of the separate provisions of clauses 33.3, 33.4 and 33.5.
- 33.3 Each Restrained Shareholder undertakes to the Group that it will not and will procure that its Affiliates do not:
- (a) engage in a business or activity that is the same or similar to, or competes with, the Business or any material part of the Business;
  - (b) employ, solicit or entice away from a Group Company an officer, manager, consultant or employee of a Group Company or a person who was an officer, manager, consultant or employee of any Group Company in the 12 months before the Restrained Shareholder ceased to hold shares; or
  - (c) attempt, counsel, procure or otherwise assist a person to do any of the acts referred to in this clause 33.3,
- except with the prior written consent of the Board by Required Resolution.
- 33.4 The undertakings in clause 33.3 begin on the date each Restrained Shareholder first holds shares in the Company and end:
- (a) 3 years after the date on which the Restrained Shareholder ceased to hold shares in the Company;
  - (b) 2 years after the date on which the Restrained Shareholder ceased to hold shares in the Company; and
  - (c) on the first anniversary of the date on which the Restrained Shareholder ceased to hold shares in the Company.
- 33.5 The undertakings in clause 33.3 apply if the activity prohibited by clause 33.3 occurs in:
- (a) Australia;
  - (b) South Australia, Victoria and New South Wales;
  - (c) South Australia; and
  - (d) within a radius of 10 kilometres from any location from which the Group conducts the Business at the date the Restrained Shareholder ceases to be a Shareholder,
- during the periods set out in clause 33.4.
- 33.6 In this clause 33:
- (a) **Business** means the business of the Group;
  - (b) **Group** means the Company and its subsidiaries;



- (c) **Group Company** means any one of the Company or its subsidiaries;
  - (d) **Restrained Shareholder** means any shareholder who holds, or who has at any time held, an Equity Proportion of more than 5%.
- 33.7 Without limiting clause 33.3, each shareholder:
- (a) acknowledges that the information and also any other materials, intellectual property or knowledge relating to the Company or its business that is disclosed by the Company to the shareholder on a confidential basis (**Confidential Information**) is confidential, and is given by the Company to the shareholder in strictest confidence;
  - (b) acknowledges that Confidential Information is the Company's property;
  - (c) will at all times keep Confidential Information entirely secret and confidential;
  - (d) will not, except as authorised by the Company, or as required by law, use any Confidential Information, or disclose any of it to any person.
34. **Deed of covenant**
- 34.1 If a shareholder (**Exiting Shareholder**) wishes to transfer all of its shares in the Company to another person, the Company may require the Exiting Shareholder to first execute and deliver to the Company a deed of covenant under which the Exiting Shareholder agrees to be bound by the undertakings in clause 33, in a form reasonably satisfactory to the Company.
- 34.2 The Company may refuse to register a transfer of any shares by a shareholder until the shareholder complies with this clause 34.
- 

## **Part 5 – Proceedings of Shareholders**

### **35. One shareholder**

While the Company has only one shareholder:

- 35.1 it may pass a resolution by the shareholder recording it and signing the record;
- 35.2 the rest of this Part does not apply.

### **36. Circulating resolutions**

The Company may pass resolutions without a meeting in accordance with the Corporations Act.

### **37. Who may call meetings of shareholders**

- 37.1 A director may call a meeting of shareholders, when and where the director decides.
- 37.2 The Directors may call a meeting of shareholders, when and where the Directors decide.
- 37.3 The Directors must call a meeting of shareholders when requested by the shareholders specified in the Corporations Act.
- 37.4 The shareholders specified in the Corporations Act may call a meeting of shareholders.
- 37.5 This clause 37 is subject to clause 38.

### **38. Meetings**

Subject to the Corporations Act, the Directors may determine that a meeting of shareholders is to be held wholly or partly using virtual meeting technology, in lieu of or in addition to being held at one or more physical venues.

### 39. **How to call meetings of shareholders**

- 39.1 At least 21 days' notice must be given of a general meeting. However, unless prohibited by the Corporations Act, the Company may call a general meeting on shorter notice if shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 39.2 Notice of a meeting must be given to shareholders, directors and any auditor.
- 39.3 A notice of a general meeting must:
- (a) set out the place, date and time for the meeting;
  - (b) if the meeting is held at more than one physical venue – set out the main physical venue for the meeting;
  - (c) state the general nature of the meeting's business;
  - (d) 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
  - (e) contain a statement setting out the following information:
    - (i) that the shareholder has the right to appoint a proxy;
    - (ii) that the proxy need not be a shareholder of the Company;
    - (iii) that a shareholder 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.
- 39.4 Non receipt of notice of a meeting, or failure to give proper notice of a meeting to a person entitled to receive it, does not invalidate anything done at the meeting if:
- (a) the failure was accidental;
  - (b) the person gives notice to the Company that the person waives proper notice or agrees to the thing done at the meeting; or
  - (c) the person attends the meeting and:
    - (i) does not object at the start of the meeting to the holding of the meeting; or
    - (ii) if the notice omitted an item of business, does not object to the consideration of the business when it is presented to the meeting.

### 40. **Quorum**

- 40.1 The quorum for a meeting of the Company's shareholders is two shareholders entitled to vote. The quorum must be present at all times during the meeting.
- 40.2 In determining whether a quorum is present, the chairman must count shareholders, proxies, attorneys, body corporate representatives and any other persons entitled to vote. However, if a shareholder has more than one proxy, attorney or body corporate representative, the chairman must count only one of them. If an individual is attending both as a shareholder and as a proxy, attorney or body corporate representative, or in any other capacity, the chairman must count them only once.
- 40.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) if the meeting was called on the request of shareholders or by shareholders, the meeting is dissolved;
  - (b) any other meeting is adjourned to any day, time and place the Directors decide.
- 40.4 If a quorum is not present within 30 minutes after the time appointed for an adjourned meeting, the meeting is dissolved.

### 41. **Chairman**

- 41.1 The chairman of Directors is entitled to chair all meetings of shareholders.

- 41.2 If there is no chairman of Directors, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the directors present must elect a person to chair the meeting. If they do not do so, the shareholders present must elect a person to chair the meeting.

**42. Regulation of meetings**

The chairman may regulate the meeting of shareholders in any way consistent with this constitution.

**43. Adjournment**

- 43.1 The chairman may adjourn a meeting of shareholders to any day, time and place.
- 43.2 The chairman must adjourn a meeting of shareholders if the shareholders present with a majority of votes at the meeting agree or direct the chairman to do so. The chairman may adjourn the meeting to any day, time and place.
- 43.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for more than a month.
- 43.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**44. How shareholders make decisions at meetings**

- 44.1 A meeting of shareholders makes a decision by passing a resolution. A resolution is passed if more than 50% of the votes cast by shareholders entitled to vote are in favour of the resolution (unless the law requires a special resolution).
- 44.2 A special resolution is passed if:
- (a) the notice of the meeting sets out an intention to propose the special resolution and states the resolution; and
  - (b) it is passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution.
- 44.3 A special resolution may be passed by the Company without a meeting under clause 36.

**45. How voting is carried out**

- 45.1 Unless a poll is properly requested, a resolution put to the vote at a meeting of shareholders must be decided on a show of hands.
- 45.2 If a poll is properly requested, the result of the poll is the resolution of the meeting.
- 45.3 A declaration by the chairman that a resolution is passed, or passed by a particular majority, or lost, and an entry to that effect in the minutes, are sufficient evidence of that fact, unless proved incorrect.

**46. Polls**

- 46.1 A poll may be requested on any resolution.
- 46.2 A poll may be requested by:
- (a) at least two shareholders entitled to vote on the resolution;
  - (b) shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (c) the chairman.
- 46.3 The poll may be requested:
- (a) before a vote is taken;
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.

- 46.4 A request for a poll may be withdrawn.
- 46.5 A poll requested on a matter other than the election of a chairman or the question of an adjournment must be taken when and how the chairman directs.
- 46.6 A poll on the election of a chairman or the question of an adjournment must be taken immediately.
- 46.7 A request for a poll does not prevent the meeting dealing with other business.

**47. How many votes a shareholder has**

- 47.1 Subject to this constitution and any special rights or restrictions attached to a share, at a meeting of shareholders:
  - (a) on a show of hands, each shareholder present (in person, by proxy, attorney or representative) has one vote;
  - (b) on a poll, each shareholder present (in person, by proxy, attorney or representative) has:
    - (i) one vote for each fully paid share they hold; and
    - (ii) a fraction of a vote for each partly paid share they hold. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call are ignored.
- 47.2 The chairman does not have a casting vote.
- 47.3 If a share is held jointly and more than one shareholder votes the share, only the vote of the shareholder whose name appears first in the register of shareholders counts.
- 47.4 The parent or guardian of an infant shareholder may vote that infant's share, if the parent or guardian satisfies the Directors of the relationship or appointment before the meeting. If the infant's parent or guardian votes the share, the infant shareholder must not vote.
- 47.5 A person may vote a share if:
  - (a) the person is entitled to be registered as the holder of the share because of a Transmission Event; and
  - (b) the person satisfies the Directors of that entitlement before the meeting.The shareholder must not vote a share if another person does so under this sub clause 47.5.
- 47.6 A shareholder must not vote a share, if a call or other amount is presently payable in respect of the share.
- 47.7 The chairman or other person may disregard any vote by a shareholder who is not entitled to vote.

**48. Challenging a right to vote**

- 48.1 A challenge to a right to vote at a meeting of shareholders may only be made:
  - (a) before the meeting, to the Directors; or
  - (b) at the meeting, to the chairman of the meeting.
- 48.2 The challenge must be decided by the Directors or the chairman (as the case may be). The Directors' decision or the chairman's decision is final.

**49. Proxies, attorneys and representatives**

- 49.1 A shareholder, who is entitled to vote at a meeting of shareholders, may vote:
  - (a) on a show of hands:
    - (i) personally;

- (ii) by one proxy;
  - (iii) by one attorney; or
  - (iv) if a body corporate, by its representative, or by one proxy or one attorney;
- (b) on a poll:
  - (i) personally;
  - (ii) by not more than two proxies;
  - (iii) by not more than two attorneys; or
  - (iv) if a body corporate, by its representative, proxy or attorney.
- 49.2 A proxy, attorney or representative need not be a shareholder of the Company.
- 49.3 A shareholder may appoint a proxy, attorney or representative for all or for particular meetings of shareholders.
- 49.4 An appointment of an attorney or representative must be in a form accepted by the Directors.
- 49.5 An appointment of a proxy is valid if it is signed by the shareholder making the appointment and contains the following information:
  - (a) the shareholder's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office of the proxy;
  - (d) the meetings at which the proxy may be used.

An appointment may be a standing one.
- 49.6 The Directors may decide to accept a proxy even if it contains only some of that information.
- 49.7 Unless otherwise specified in the appointment, the proxy, attorney or representative may:
  - (a) agree to short notice for the meeting;
  - (b) even if the appointment directs how to vote on a particular resolution:
    - (i) vote on an amendment to the particular resolution, a motion not to put the particular resolution or any similar motion;
    - (ii) vote on a procedural motion, including a motion to elect the chairman, to vacate the chair or adjourn the meeting;
  - (c) speak at the meeting;
  - (d) vote (but only to the extent allowed by the appointment);
  - (e) demand or join in a demand for a poll.
- 49.8 If a person represents two or more shareholders, that person has only one vote on a show of hands.
- 49.9 If a shareholder appoints two proxies or two attorneys in one instrument and both are present, on a show of hands only the first named proxy or attorney may vote.
- 49.10 The appointment may specify the proportion or number of votes that the proxy or attorney may exercise. If the shareholder appoints two proxies or two attorneys and the appointment does not specify the proportion or number of the shareholder's votes each proxy or attorney may exercise, on a poll each proxy or attorney may exercise half of the votes.
- 49.11 A later appointment of a proxy or attorney revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 49.12 An appointment may specify the way a proxy is to vote on a particular resolution. A proxy may vote only as directed.
- 49.13 An appointment of a proxy is effective only if the Company receives the appointment (and any authority under which the appointment was signed or certified copy of the authority) at least

48 hours before the meeting or resumed meeting, unless the Directors decide to reduce that time. These requirements also apply to an appointment of an attorney.

- 49.14 Unless the Company receives notice before the start or resumption of a meeting, a vote by a proxy, attorney or representative is valid even if:
- (a) there is a Transmission Event in respect of the shareholder;
  - (b) the appointment of the proxy, attorney or representative is revoked;
  - (c) the shareholder revokes the authority under which the proxy was appointed by a third party; or
  - (d) the shareholder becomes an externally-administered body corporate.
- 49.15 A vote by a proxy or attorney is valid even if the shareholder transfers the share for which the appointment was given, if the transfer is not registered at the time of the meeting.
- 49.16 A proxy or attorney may take part in a meeting of shareholders even if the appointor or representative is present. However, if the appointor or representative votes on a resolution, the proxy or attorney must not vote.
- 

## **Part 6 – Directors**

### **50. Number of directors**

The Directors will consist of no more than five directors and must have at least two directors while the Company is making a CSF Offer or has one or more CSF Shareholders. Of those directors:

- 50.1 if there are only two of them – at least one must ordinarily reside in Australia; or
- 50.2 otherwise – a majority of them must ordinarily reside in Australia.

### **51. Appointment of directors**

Subject to the maximum number of directors under clause 50 not being exceeded:

- 51.1 the Directors may appoint a director;
- 51.2 the Company in general meeting may appoint a director; or
- 51.3 a member may appoint a director under Schedule 3 (if applicable).

### **52. Vacation of office**

A director ceases to be a director if:

- 52.1 the Corporations Act so provides;
- 52.2 the director resigns by notice to the Company;
- 52.3 the Company in general meeting removes the director;
- 52.4 the director becomes incapable of managing his or her own affairs due to a medical or mental condition (as evidenced by a certificate to that effect by a qualified medical practitioner) or the director's estate or property has had a personal representative or trustee appointed to administer it; or
- 52.5 the director was appointed to office for a specified period and that period expires.

### **53. Alternate directors**

- 53.1 A director may appoint an alternate for a specified period with the consent of the Directors.
- 53.2 The appointor may terminate the alternate's appointment at any time.
- 53.3 An appointment or termination is effective only if:

- (a) it is in writing;
  - (b) the appointor signs it; and
  - (c) the Company is given notice of it.
- 53.4 The alternate need not be a shareholder or director of the Company.
- 53.5 The alternate is entitled to notice of Directors' meetings.
- 53.6 If the appointor is not present, the alternate may:
  - (a) attend the Directors' meeting, count in the quorum, speak, and vote in the place of the appointor;
  - (b) exercise any other powers (except the power to appoint an alternate) that the appointor may exercise.
- 53.7 A person may act as an alternate for more than one director.
- 53.8 If the appointor ceases to be a director, the alternate cannot exercise the appointor's powers.
- 53.9 Where:
  - (a) an appointor ceases to be a director; and
  - (b) that appointor's alternate purports to do an act as a director,
 that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actually knowing that the appointor has ceased to be a director, as if the appointor had not ceased to be a director.
- 53.10 The Company may pay an alternate any remuneration the Directors decide, in reduction of the appointor's remuneration.
- 53.11 While acting as a director, an alternate is an officer of the Company and not the agent of the appointor.

#### **54. Remuneration**

- 54.1 The Company may pay to the directors a maximum total amount of directors' fees, set by the Company in general meeting (excluding salaries and normal employee benefits).
- 54.2 A director's remuneration may be:
  - (a) a fixed sum for each attendance at a Directors' meeting;
  - (b) a share of an aggregate fee; or
  - (c) a combination of a fixed sum and a share of an aggregate fee.
 The directors may divide the aggregate fee among themselves. If they do not agree the division, the aggregate fee is divided equally among them.
- 54.3 A share of a fixed sum of a director's remuneration accrues from day to day.
- 54.4 The Company must also pay travelling and other expenses that a director properly incurs on the Company's business.
- 54.5 If a director performs extra or special duties for the Company, the Company may pay to the director any special remuneration the Directors decide, in addition to the director's normal remuneration.
- 54.6 The Company may pay a former director, or the estate of a director who dies in office, a benefit for past services as the Directors decide.
- 54.7 The Company may establish or support superannuation or similar funds for the directors, as the Directors decide.

#### **55. Share qualification**

- 55.1 A director need not be a shareholder of the Company.

55.2 A director, who is not a shareholder, may attend and speak at meetings of shareholders.

**56. Director's interests**

56.1 A director may:

- (a) hold an office or place of profit (except as auditor) in the Company, on any terms the Directors decide;
- (b) hold an office or otherwise be interested in any related body corporate or other body corporate in which the Company is interested;
- (c) retain benefits for doing so.

56.2 Subject to the Corporations Act:

- (a) a director who has a material personal interest in a matter that is being considered at a Directors' meeting:
  - (i) may be present while the matter is being considered at the meeting;
  - (ii) may be counted in a quorum for a meeting considering the matter;
  - (iii) may vote on the matter;
- (b) a director (or a Spouse, parent or child of a director, or any entity in which a director or a Spouse, parent or child of a director has an interest) may contract or make an arrangement with the Company (or a related body corporate or a body corporate in which the Company is interested) in any matter in any capacity;
- (c) a director may sign for the Company, or attest the affixing of the common seal to, any document in respect of that contract or arrangement;
- (d) a director may retain benefits under that contract or arrangement;
- (e) the Company cannot avoid that contract or arrangement because of the director's interest.

**57. Director of wholly owned subsidiary**

If the Company is a wholly owned subsidiary of a body corporate, a director may act in the best interests of the holding company.

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**Part 7 – Proceedings of Directors**

**58. Single director**

If the Company has only one director:

- 58.1 the director may pass a resolution by recording it and signing the record;
- 58.2 the rest of this Part does not apply.

**59. Circulating resolutions if more than one director**

- 59.1 The Directors may pass a resolution without a Directors' meeting being held, if all of the directors 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. An alternate appointed by a director may sign the document instead of that director.
- 59.2 Separate copies of a document may be used for signing by directors, if the wording of the resolution and statement is identical in each copy.
- 59.3 The resolution is passed when the last director signs.
- 59.4 Passage of the resolution must be recorded in the Company's minute book.



**60. Meetings**

- 60.1 The Directors may meet, adjourn and otherwise regulate their meetings as they decide.
- 60.2 A Directors' meeting may be held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw consent within a reasonable period before the meeting.
- 60.3 If a Directors' meeting is held by telephone link up or other contemporaneous audio or audio visual communication, a director is taken to be present unless the director states to the chairman that the director is disconnecting his or her telephone or communication device.

**61. Calling meeting**

- 61.1 Any director may call a Directors' meeting.
- 61.2 On the request of any director, the company secretary must call a Directors' meeting.

**62. Notice**

- 62.1 Notice of a Directors' meeting must be given to each director and each alternate.
- 62.2 The notice must:
  - (a) specify the day, time and place of the meeting;
  - (b) state the business to be transacted;
  - (c) be given at least 48 hours before the meeting, unless all directors otherwise agree.
- 62.3 Non receipt of notice of a meeting, or failure to give notice of a meeting to a director or an alternate, does not invalidate anything done at the meeting if:
  - (a) the failure was accidental;
  - (b) the director or alternate gives notice to the Company that he or she waives the notice or agrees to the thing done at the meeting; or
  - (c) the director or alternate attends the meeting.

**63. Quorum**

- 63.1 The quorum for a Directors' meeting is two directors.
- 63.2 In determining whether a quorum is present, the chairman must count alternates. If a director is also an alternate, the chairman must count the director as a director and separately as an alternate. If a person is an alternate for more than one director, the chairman must count the person separately for each appointment.
- 63.3 The quorum must be present at all times during the meeting.

**64. Chairman**

- 64.1 The Directors may elect a director as chairman for any period they decide.
- 64.2 The Directors may remove the chairman.
- 64.3 The Directors may decide that this office is an extra or special service for the Company, for the purpose of deciding special remuneration.
- 64.4 The chairman is entitled to chair each Directors' meeting.
- 64.5 If there is no chairman, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the directors present must elect one of themselves to chair the meeting.
- 64.6 If the chairman is unable or unwilling to chair a part of a meeting, the directors present must elect one of themselves to chair that part.

## 65. **Decisions of Directors**

- 65.1 Subject to the Corporations Act, each director has one vote.
  - 65.2 If a director is also an alternate, the director has a vote as a director and a vote as an alternate. If a person is an alternate for more than one director, the person has one vote for each appointment.
  - 65.3 A resolution of the Directors is passed by a majority of votes cast.
  - 65.4 The chairman does not have a casting vote.
- 

## **Part 8 – Directors’ Powers**

### 66. **General powers**

- 66.1 The business of the Company is managed by or under the direction of the Directors.
- 66.2 The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this constitution requires the Company to exercise in general meeting.
- 66.3 Notwithstanding the above, the Company must not make, and must ensure no subsidiary makes, any decision covering a matter listed below without the approval of the shareholders by special resolution:
  - (a) **(encumbrances)** granting any Security Interest of any nature in respect of all or any material part of the Company’s undertaking, property, assets or the issuance of any guarantee in favour of the obligations of a third party (other than an Affiliate);
  - (b) **(share rights)** varying the rights of any shares;
  - (c) **(constitution)** amending this constitution; and
  - (d) **(related party transactions)** other than as permitted by this constitution, transactions between the Company and a shareholder or its Affiliate which are outside of the ordinary course of business, otherwise than on arm’s length terms.

### 67. **Execution of documents**

- 67.1 The Company may execute a document without a common seal if the document is signed by:
  - (a) two directors of the Company; or
  - (b) a director and a company secretary of the Company; or
  - (c) if the Company has a sole director who is also the sole company secretary - that director.
- 67.2 If the Company has a common seal, 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; or
  - (b) a director and a company secretary of the Company; or
  - (c) if the Company has a sole director who is also the sole company secretary - that director.
- 67.3 The Company may execute a document only if authorised by the Directors or by a committee of directors authorised by the Directors to do so.
- 67.4 The Directors may decide, generally or in a particular case, that a director or company secretary may sign certificates for securities of the Company by mechanical or other means.
- 67.5 This clause 67 does not limit the ways in which the Company may execute a document (including a deed).

**68. Negotiable instruments**

Negotiable instruments (including cheques) may be signed, drawn, accepted, endorsed or otherwise executed by any one director, or as the Directors decide.

**69. Committee and delegate**

- 69.1 The Directors may delegate any of their powers (including this power to delegate) to a committee of directors or to one director.
- 69.2 The Directors may revoke or vary that delegation.
- 69.3 A committee or delegate must exercise the powers delegated subject to any directions of the Directors. The effect of the committee or delegate exercising a power in this way is the same as if the Directors exercised it.
- 69.4 Part 7 applies with the necessary changes to meetings of a committee.
- 69.5 The Directors may decide that membership of a committee or acting as a delegate is an extra or special service for the Company, for the purpose of deciding special remuneration.

**70. Attorney and agent**

- 70.1 The Directors may appoint any person to be the attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) the Directors decide.
- 70.2 The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- 70.3 The Directors may revoke or vary:
  - (a) the appointment; or
  - (b) any power delegated to the attorney or agent.

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**Part 9 – Executive Officers**

**71. Managing director**

- 71.1 The Directors may appoint one or more of themselves as managing director, for any period and on any terms (including as to remuneration) the Directors decide.
- 71.2 Subject to any agreement between the Company and the managing director, the Directors may remove or dismiss the managing director at any time, with or without cause.
- 71.3 The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- 71.4 The Directors may revoke or vary:
  - (a) the appointment; or
  - (b) any power delegated to the managing director.
- 71.5 A managing director must exercise the powers delegated subject to any directions of the Directors. The effect of the managing director exercising a power in this way is the same as if the Directors exercised it.
- 71.6 A person ceases to be managing director if the person ceases to be a director.

**72. Company secretary**

- 72.1 The first company secretary of the Company is the person specified in the application for registration of the Company as company secretary.

- 72.2 The Directors may appoint one or more company secretaries, for any period and on any terms (including as to remuneration) the Directors decide.
- 72.3 Subject to any agreement between the Company and the company secretary, the Directors may remove or dismiss the company secretary at any time, with or without cause.
- 72.4 Unless the Directors otherwise decide, the company secretary is the public officer of the Company.

### 73. Indemnity

- 73.1 To the extent permitted by the Corporations Act, the Company:
- (a) must indemnify each person who is or has been an Officer of the Company against any liability incurred by the person as an Officer of the Company;
  - (b) may pay a premium for a contract insuring an Officer of the Company against that liability.
- 73.2 Subject to the Corporations Act, the Company may enter into an agreement or deed with an Officer of the Company under which the Company must do all or any of the following:
- (a) keep a set of the Company's books (including minute books) and allow the Officer and the Officer's advisers access to the books for any period agreed;
  - (b) indemnify the Officer against any liability incurred by the Officer as an Officer;
  - (c) keep the Officer insured for any period agreed in respect of any act or omission by the Officer while an Officer.
- 73.3 In this clause 73, '**Officer**' means an officer of the Company or of a subsidiary of the Company or both.

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## Part 10 – Dividends

### 74. Who may determine Dividends

- 74.1 Subject to:
- (a) any special rights or restrictions attached to a share; and
  - (b) any restrictions in the Corporations Act,
- the Directors may pay Dividends as they decide.
- 74.2 The Directors may determine that a Dividend will be payable on a share and fix:
- (a) the amount;
  - (b) the time for payment; and
  - (c) the method of payment.
- The methods of payment may include the payment of cash, the issue of shares or other securities, the grant of options and the transfer of assets.
- 74.3 If the Directors do not exercise their power under this clause 74, the Company in general meeting may.

### 75. Dividends for different classes

Dividends may be paid:

- 75.1 on shares of one class but not another; and/or
- 75.2 at different rates for different classes.

**76. Dividends proportional to paid up capital**

76.1 Subject to any special rights or restrictions attached to a share:

- (a) the holder of a fully paid share is entitled to the full Dividend on the share (whether the issue price was paid or credited or both);
- (b) the holder of a partly paid share is not entitled to a greater proportion of a Dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the share.

76.2 Amounts paid or credited as paid in advance of a call are ignored.

**77. Transfers before payment of Dividend**

If a Dividend on a share is paid after the transfer of the share but before registration, the transferor is entitled to the Dividend.

**78. No interest**

Interest is not payable on a Dividend.

**79. Calls**

The Directors may deduct from a Dividend payable to a shareholder any money presently payable by the shareholder to the Company for calls or otherwise in respect of any shares held by the shareholder.

**80. Capitalising profits**

80.1 The Directors may capitalise any profits and distribute that capital to the shareholders, in the same proportions as the shareholders are entitled in a distribution by Dividend.

80.2 The Directors may decide to apply that capital in either or both of the following ways:

- (a) in paying up amounts unpaid on shares already issued;
- (b) in paying up in full any unissued shares or other securities in the Company.

80.3 The shareholders must accept that application of capital in full satisfaction of their interests in the capital.

**81. Transfer of assets**

The Directors may settle any problem about a distribution under this Part in any way. This may include:

- 81.1 rounding down amounts to the nearest whole number;
- 81.2 ignoring fractions;
- 81.3 valuing assets for distribution;
- 81.4 paying cash to any shareholder on the footing of the valuation of the assets;
- 81.5 vesting assets in a trustee on trust for the shareholders entitled.

**82. Notice of Dividend**

The Company must give to the shareholders notice of any Dividend.

**83. Payments**

83.1 The Company may pay Dividends and other amounts in respect of a share:

- (a) by crediting a financial institution account authorised by the shareholder; or
- (b) by cheque or warrant posted:

- (i) to the address of the holder of the share shown in the register of shareholders;
- (ii) if joint holders, to the address (shown in the register of shareholders) of the holder named first in the register of shareholders; or
- (iii) to any other address which the holder or joint holders direct in writing.

83.2 A cheque may be made payable to bearer or to the order of the shareholder or any other person the shareholder directs.

83.3 Any joint holder of a share may give an effective receipt for the Dividend or other amounts paid in respect of the share.

#### 84. **Dividend reinvestment plan**

The Directors may:

84.1 implement a dividend reinvestment plan on any terms, under which the Dividends of participants are applied in subscribing for securities of the Company or a related body corporate;

84.2 amend, suspend or end the plan.

#### 85. **Dividend selection plan**

The Directors may:

85.1 implement a dividend selection plan on any terms, under which participants may choose:

- (a) to receive a Dividend from the Company out of profits derived from a particular source;
- (b) to forego a Dividend from the Company in place of another distribution from the Company or another body corporate or a trust;

85.2 amend, suspend or end the plan.

### **Part 11 – Winding Up**

#### 86. **Distribution of assets**

Subject to any special rights or restrictions attached to shares:

86.1 if on a winding up there are enough assets to repay all capital to shareholders, all capital must be repaid to the shareholders and any surplus must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began;

86.2 if on a winding up there are not enough assets to repay all capital to shareholders, the available assets must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began (without the necessity of a call up).

#### 87. **Distribution of property in kind**

87.1 Subject to any special rights or restrictions attached to shares, on a winding up, the liquidator may, with the sanction of a special resolution of shareholders:

- (a) distribute among the shareholders the whole or any part of the property (in its actual state) of the Company;
- (b) decide how to distribute the property as between the shareholders or different classes of shareholders.

- 87.2 The liquidator may, with the sanction of a special resolution of shareholders, distribute the property contrary to the legal rights of the shareholders, or give or remove special rights in respect of any class of shareholders. However, a dissenting shareholder has the same rights as if section 507 of the Corporations Act applied.
- 87.3 The liquidator may settle any problem about a distribution under this clause 87 in any way. This may include:
- (a) rounding down amounts to the nearest whole number;
  - (b) ignoring fractions;
  - (c) valuing assets for distribution;
  - (d) paying cash to any shareholder on the footing of the valuation of the assets;
  - (e) vesting assets in a trustee on trust for the shareholders entitled;
  - (f) capitalising profits and distributing capital as if the liquidator were the Directors.
- 87.4 A shareholder need not accept a security carrying a liability.
88. **Commissions**
- 88.1 The Company must not pay to a director, the Directors or a liquidator a commission or fee for sale of assets on a winding up, unless approved by the shareholders.
- 88.2 The Company must notify the shareholders of the amount of the proposed commission or fee at least 7 days before the shareholders' meeting.

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## Part 12 - Records

### 89. **Register**

The Company must keep a register of shareholders.

### 90. **Branch registers**

- 90.1 The Company may keep a branch register of shareholders in any place.
- 90.2 The Directors may regulate the transfer of shares among the main register of shareholders and branch registers of shareholders.

### 91. **Inspection**

The Company must allow inspection of any register of shareholders only as required by the Corporations Act.

### 92. **Evidence of register**

Unless proved incorrect, the register of shareholders is sufficient evidence of the matters shown in the register.

### 93. **Minute book**

- 93.1 The Company must keep minute books in which it records within one month:
- (a) proceedings and resolutions of meetings of the members;
  - (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
  - (c) resolutions passed by members without a meeting;
  - (d) resolutions passed by directors without a meeting.

- 93.2 The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
- (a) the chair of the meeting;
  - (b) the chair of the next meeting.
- 93.3 The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

**94. Evidence of minutes**

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

**95. Financial records**

The Company must keep the financial records required by the Corporations Act.

**96. Inspection**

Unless authorised by the Directors or the Company in general meeting or the Corporations Act, a shareholder is not entitled to inspect the Company's books.

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**Part 13 – Notices and Interpretation**

**97. In writing**

Notice must be in writing and in English, and may be given by an authorised representative of the sender.

**98. Notice to shareholders**

- 98.1 The Company may give notice to a shareholder:
- (a) personally;
  - (b) by sending it by post to the address of the shareholder in the register of shareholders or the alternative address (if any) nominated by the shareholder;
  - (c) by sending it to the fax number or electronic address (if any) nominated by the shareholder.
- 98.2 The Company may give notice to a person entitled to a share because of a Transmission Event in the same ways.
- 98.3 Notice to joint shareholders must be given to the joint shareholder named first in the register of shareholders.
- 98.4 Notice to a person, entitled to a share because of a Transmission Event, is taken to be notice to the shareholder.
- 98.5 A notice to a shareholder is sufficient, even if the shareholder (whether or not a joint shareholder) is dead, mentally incapacitated, an infant, bankrupt or an externally-administered body corporate, and the Company has notice of that event.
- 98.6 A person, entitled to a share because of a transfer, Transmission Event or otherwise, is bound by every notice given in respect of the share.

**99. Notice to directors**

The Company may give notice to a director or alternate director:

- 99.1 personally;



- 99.2 by sending it by post to the director's or alternate director's usual residential or business address or any other address nominated by them;
- 99.3 if a notice calling a meeting – by sending it to the fax or electronic address (if any) nominated by the director or alternate, only if all the directors have consented to the use of that technology;
- 99.4 if any other notice – by sending it to the fax or electronic address (if any) nominated by the director or alternate.

100. **Notice to the Company**

A person may give notice to the Company:

- 100.1 by leaving it at the Company's registered office;
- 100.2 by sending it by post to the Company's registered office;
- 100.3 by sending it to the fax or electronic address (if any) of the Company's registered office.

101. **Time of service**

A notice sent by post is taken to be given on the fifth Business Day after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the next Business Day after it is sent.

102. **Interpretation**

In this constitution, unless the context otherwise requires:

- 102.1 subject to the remaining provisions of this clause 103, a word or phrase has the same meaning as it has in the Corporations Act;
- 102.2 singular includes plural and plural includes singular;
- 102.3 words of one gender include any gender;
- 102.4 reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 102.5 reference to a person includes a corporation, a firm and any other entity;
- 102.6 headings do not affect interpretation;
- 102.7 the Company must not exercise any power in contravention of the Corporations Act.

103. **Definitions**

In this constitution:

**Affiliate** means, in relation to a person (first-mentioned person):

- (a) a person that Controls or is Controlled by the first-mentioned person; and
- (b) a Related Body Corporate of the first-mentioned person;

**Business Day** means any day except a Saturday or Sunday or other public holiday in South Australia;

**Company** means the entity in Item 1 of the Details Schedule;

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

**CSF Offer** has the meaning given in the Corporations Act;

**CSF Shareholder** has the meaning given in the Corporations Act;

**Details Schedule** means the Schedule appearing immediately before Part 1 of this constitution;

**Directors** means the directors of the Company and may include an alternate director;

**Dividend** includes interim dividend and bonus;

**Drag Threshold** has the meaning given in Item 5 of the Details Schedule;

**Equity Proportion** means, in relation to a member, the proportion (expressed as a percentage) which the number of shares held by the member bears to the total number of issued shares;

**Excluded Issue** means:

- (a) anything identified in this constitution as an Excluded Issue;
- (b) shares issued in connection with share splits or the issue of dividends which is approved by a Required Resolution of the Directors;
- (c) shares issued as part of an IPO which is approved by a Required Resolution of the Directors;  
or
- (d) shares constituting all or part of the consideration for a bona fide acquisition of assets or shares by the Company which is approved by the Required Resolution of the Directors;

**Exit** means:

- (a) an IPO;
- (b) the sale of all of the shares in the Company; or
- (c) the sale of all or substantially all of the business and assets of the Company on arms length terms to one or more unrelated buyers as part of a single transaction;

**Founding Shareholders** means the shareholders of the Company immediately prior to the Company's first CSF Offer;

**IPO** means an initial public offering of shares in the Company or shares in a holding company of the Company in conjunction with a listing or quotation of shares in the Company or shares in a holding company of the Company on a recognised securities exchange;

**Permitted Transfer** means a transfer of shares in the Company referred to in clause 23;

**Relative** means:

- (a) a Spouse; and
- (b) a child or remoter issue, a brother, sister, niece or nephew, or the Spouse of any of them;

**Required Resolution** means a resolution:

- (a) approved by 75% or more of the directors entitled to vote; or
- (b) identified in a document where all directors entitled to vote on the resolution sign a statement that they are in favour of the resolution set out in the document.

**Restricted Shares** means, if Item 3 of the Details Schedule says shares held by Founding Shareholders (or their successors or permitted assigns, including pursuant to clauses 23.4, 23.5 or 23.6) will be Restricted Shares, any shares in the Company held by Founding Shareholders (or their successors or permitted assigns, including pursuant to clauses 23.4, 23.5 or 23.6) for a period that is shorter than the Restriction Period;

**Restriction Period** has the meaning given in Item 3 of the Details Schedule;

**Security Interest** means:

- (a) a 'security interest' as defined in the *Personal Property Securities Act 2009* (Cth);
- (b) any third party rights or interests including a mortgage, lien, charge, pledge, assignment by way of security, security interest, encumbrance, title retention, preferential right or trust arrangement, Claim, covenant, easement or any other security arrangement or any other arrangement having the same effect;
- (c) a right, interest or arrangement which has the effect of giving another person priority over creditors including any right of set-off;
- (d) a right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (e) an agreement to create any of them or allow them to exist;

**Spouse** of a person means:

- (a) that person's husband, wife, widow or widower (whether or not remarried); or
- (b) anyone else who, although not legally married to that person, in the Directors' opinion, lives or lived with that person on a genuine domestic basis as the husband or wife of that person;

**Tag Threshold** has the meaning given in Item 4 of the Details Schedule;

**Transmission Event** means:

- (a) if a shareholder is an individual – death, bankruptcy, or becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health;
- (b) if a shareholder is a body corporate – the deregistration or winding up of the shareholder or the succession by another body corporate to the assets and liabilities of the shareholder.

## Schedule 1 – Tag along rights

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The provisions of this Schedule 1 apply if Item 4 of the Details Schedule says tag a long rights will apply in this constitution.

### 1. Tag along rights

- 1.1 If a shareholder (**Seller**) is entitled, and wishes, to sell unallocated shares to a third party purchaser under clause 24.10, and the unallocated shares total the Tag Threshold or more of the total issued shares in the Company, the Seller must, before that sale, give notice to the Directors to that effect, and the Directors must (as agent of the Seller) notify each other shareholder (**Tag Along Shareholder**) of the Seller's intention (**Tag Along Notice**).
- 1.2 A Tag Along Notice gives each Tag Along Shareholder the right (**Tag Along Option**) to require the Seller to procure the purchase by the proposed purchaser of all of the shares held by the Tag Along Shareholder, and must include details of:
  - (a) the name of the third party purchaser;
  - (b) the number of shares in the proposed sale to the third party purchaser;
  - (c) the sale price and any other material terms of the proposed sale to the purchaser; and
  - (d) the period during which a Tag Along Option may be exercised, which must be a period of not less than 10 Business Days from the date of service of the Tag Along Notice (**Exercise Period**).
- 1.3 A Tag Along Option may be exercised by notice (**Exercise Notice**) to the Directors (as agent of the Seller) given within the Exercise Period.
- 1.4 If a Tag Along Shareholder exercises its Tag Along Option, the Seller must not sell its unallocated shares to the third party purchaser unless the third party purchaser, at the same time, buys the Tag Along Shareholder's shares specified in the Exercise Notice at the same price per share.
- 1.5 If the Tag Along Option is not exercised within the period specified in the Tag Along Notice, it will be deemed to have lapsed at 11.59 pm (at the local time in the place of the Company's registered office) on the last day of the Exercise Period.

## Schedule 2 – Drag along rights

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The provisions of this Schedule 2 apply if Item 5 of the Details Schedule says drag along rights will apply in this constitution.

### 1. Drag along rights

- 1.1 If the Company or any shareholder receives a bona fide offer from a third party to purchase all of the shares in the Company (**Third Party Offer**) and shareholders acting together owning at least the Drag Threshold of the issued shares in the Company wish to accept the Third Party Offer (**Dragging Shareholders**), any Dragging Shareholder is entitled to issue to some or all of the remaining shareholders (**Other Shareholders**) a notice (**Drag Along Notice**) requiring each such Other Shareholder to sell to the third party specified in the Drag Along Notice some or all of the Other Shareholder's shares.
- 1.2 Despite anything else in this constitution, the pre-emption procedure set out in clause 24 does not apply to the relevant shares once a Drag Along Notice has been issued.
- 1.3 The Drag Along Notice must specify:
  - (a) the details of the third party purchaser;
  - (b) the price payable for each share; and
  - (c) any other material terms upon which the Other Shareholders' shares will be purchased pursuant to the Drag Along Notice.
- 1.4 The terms on which the Dragging Shareholders require the Other Shareholders to sell their shares must be no less favourable to the Other Shareholders than the terms on which the Dragging Shareholders are selling their shares.
- 1.5 Subject to clause 1.6 of this Schedule, on receipt of a Drag Along Notice, the Other Shareholders must do all things necessary to:
  - (a) transfer the relevant shares specified in the Drag Along Notice to the third party purchaser; and
  - (b) allow the third party purchaser to be registered as a shareholder of the Company, in accordance with the terms and conditions of the Drag Along Notice.
- 1.6 If any Other Shareholder does not, within 10 Business Days of being required to do so under clause 1.5 of this Schedule, execute and deliver transfers, and deliver certificates, in relation to the relevant shares specified in the Drag Along Notice:
  - (a) any director is entitled to:
    - (i) execute the necessary transfers;
    - (ii) instruct such person as he or she sees fit to execute the necessary transfers; and/or
    - (iii) if the share certificate has been lost, execute a suitable indemnity in lieu of that lost certificate,on the Other Shareholder's behalf; and
  - (b) when the Company receives consideration payable for the relevant shares:
    - (i) deliver the transfers and certificates (or indemnity) to the relevant third party purchaser (or his nominee); and
    - (ii) register the third party purchaser (or nominee) as the holder;and after such registration, the validity of such proceedings will not be challenged by any person.

- 1.7 No Other Shareholder will, or will be required to make any representations, warranties, indemnities or guarantees in connection with any sale of their shares under this Schedule 2 except for usual warranties and representations as to the ownership by it of the shares.

## Schedule 3 – Nominee Director rights

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The provisions of this Schedule 3 apply if Item 6 of the Details Schedule says nominee Director rights apply in this constitution.

### 1. Appointment by a member

- 1.1 A member is entitled to appoint a director (**Representative Director**) as follows:
- (a) if a member's Equity Proportion is less than 20% at any time it has no right to appoint a Representative Director;
  - (b) if a member's Equity Proportion is at least 20% but less than 40% at any time it has a right to appoint up to one Representative Director;
  - (c) if a member's Equity Proportion is at least 40% but less than 60% at any time it has a right to appoint up to two Representative Directors;
  - (d) if a member's Equity Proportion is at least 60% but less than 80% at any time it has a right to appoint up to three Representative Directors; and
  - (e) if a member's Equity Proportion is 80% or more at any time it has a right to appoint up to four Representative Directors.
- 1.2 Subject to clause 1.1 of this Schedule, a member may appoint a Representative Director by giving to the Company notice of the appointment and the date and time the appointment is to take effect and a signed consent to act as director from the person nominated as the Representative Director.
- 1.3 A failure to appoint a Representative Director under this clause 1 of this Schedule does not constitute a waiver of a right to appoint a Representative Director.
- 1.4 A Representative Director appointed by a member may only be removed by that member except as provided for in this clause 1 of this Schedule.
- 1.5 A member may, by notice to the Company, remove a Representative Director appointed by the member and may replace a Representative Director appointed by the member who ceases for any reason to be a director (except where clause 1.6 or 1.7 of this Schedule applies).
- 1.6 If a member ceases to be a member of the Company, each Representative Director appointed by the member (if any) must resign as a director of the Company and all relevant subsidiaries and committees of the board of Directors (and may otherwise be removed by the Company in general meeting).
- 1.7 If a member's Equity Proportion falls below the minimum level required for the number of Representative Directors appointed by that member under clause 1.1 of this Schedule, the member must remove such number of Representative Directors of the member as is necessary to comply with clause 1.1 of this Schedule (and if the member fails to comply with this clause the other members of the Company in general meeting may remove such Representative Directors).
- 1.8 A Representative Director may resign or be disqualified or prohibited from acting as a director under clause 52 (other than clause 52.3).
- 1.9 A member:
- (a) must not appoint a director pursuant to this clause 1 other than on the basis that the appointment is terminable in accordance with this constitution;
  - (b) must not represent to a director appointed by it that any compensation will be payable by the Company to the director on termination of their appointment or otherwise.

## Schedule 4 – Exit provisions

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The provisions of this Schedule 4 apply if Item 7 of the Details Schedule says exit provisions apply in this constitution.

### 1. Assistance for an Exit

If the directors by a Required Resolution resolve that an Exit be implemented:

- 1.1 each shareholder must use reasonable endeavours to ensure that an Exit occurs in accordance with the approved proposal (including waiving any rights of pre-emption on any sale of shares they may have);
- 1.2 each shareholder must exercise all rights it has in relation to the Company and any shares to procure (as far as they are respectively able) that an Exit is achieved in accordance with the approved proposal; and
- 1.3 each shareholder must do all things, execute all documents and provide all such assistance as may be reasonably required by the Company (including the preparation of any necessary material for and the giving of presentations to unrelated buyers and potential financiers) to facilitate the Exit.

### 2. Preparation for an IPO

If the directors by a Required Resolution resolve to undertake an IPO or to take any other action which would facilitate an IPO (including re-organising the outstanding shares), to the extent permitted by law, each shareholder must do all acts, matters and things that are reasonably within its power and execute any document as is reasonably required by the Company to ensure that the IPO and/or such other action is effected or completed as soon as possible, including:

- 2.1 **(prospectus assistance)** assisting the Company in preparing a prospectus or similar disclosure document;
- 2.2 **(appointing board)** appointing an appropriate board of directors to the Company;
- 2.3 **(obtaining approvals)** obtaining any necessary regulatory approvals;
- 2.4 **(underwriting)** entering into an underwriting or offer management agreement or similar agreement consistent with market practice;
- 2.5 **(shareholder resolutions)** procuring the passing of shareholder resolutions;
- 2.6 **(document amendments)** agreeing to amendments to this constitution; and
- 2.7 **(selling or disposing of shares)** selling or disposing (including by way of buy back or cancellation) of some or all of its shares and surrendering any certificates for such shares (including in exchange for substantially similar securities in the IPO vehicle).

### 3. Acknowledgements in relation to an IPO

Each shareholder:

- 3.1 acknowledges that an IPO may not necessarily involve the shareholder having the right or ability to realise for cash all of its shares as part of the IPO;
- 3.2 agrees to such restrictions on the number of shares each is permitted to realise for cash as part of the IPO and such escrow arrangements for the shares or IPO vehicle securities held by the shareholder on completion of the IPO as the Company (with approval by the Directors by a Required Resolution) may reasonably require, having regard to the advice of financial advisors on what is reasonably required or desirable for a successful IPO;
- 3.3 acknowledges that the directors have the power (by Required Resolution) to determine whether or not to proceed with an Exit.